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CITY OF ASHEVILLE

CITY COUNCIL

BOARD MINUTES

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GOVERNMENT RECORDS BRANCH – IMAGING UNIT

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NORTH CAROLINA DIVISION OF ARCHIVES AND HISTORY
GOVERNMENT RECORDS BRANCH – IMAGING UNIT

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**NORTH CAROLINA DIVISION OF ARCHIVES AND HISTORY
GOVERNMENT RECORDS BRANCH – IMAGING UNIT**

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14 K2b8t Okjdg 4ef8k Gmn0c
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CITY OF ASHEVILLE

CITY COUNCIL

BOARD MINUTES

Volume: 72

Year(s): 11-14-00 THRU 3-27-01

Pages: 1—243

NORTH CAROLINA DIVISION OF ARCHIVES AND HISTORY
GOVERNMENT RECORDS BRANCH – IMAGING UNIT

Tuesday - November 14, 2000 - 5:00 p.m.
Stephens-Lee Community Center
30 George Washington Carver Street

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Peterson gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

Vice-Mayor Cloninger asked that Consent Agenda "H" be removed from the Consent Agenda due to a conflict of interest.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON OCTOBER 24, 2000, AND THE WORKSESSION HELD ON NOVEMBER 9, 2000

B. RESOLUTION NO. 00-203 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A PROFESSIONAL SERVICES CONTRACT TO PREPARE FINAL PLANS AND BID THE EXPANSION OF THE TRANSIT CENTER TICKET OFFICE FOR THE ADDITION OF A SHELTERED WAITING ROOM FOR TRANSIT CUSTOMERS

Summary: The presentation of alternatives and conceptual plans for the expansion of the Transit Center Ticket Office for the addition of a sheltered waiting room for transit customers.

At the worksession on October 3, 2000, City Council asked that staff review various alternatives for providing shelter at the Transit Center, and asked that the architect who drew the conceptual plans presented at that time be present at the next available Council worksession.

Staff has worked with the architect to address alternatives to the retrofit of the existing building, and also to refining details of the conceptual plans. City Council asked staff about possible alternatives for the provision of shelter at the Transit Center. The architect is in the process of compiling the information, which will be presented to Council by staff and the architect on Thursday, November 9, 2000.

City staff recommends City Council evaluate the proposed alternatives and if desirous of moving forward with an alternative, authorize the City Manager to enter into a professional services contract to prepare final plans and bid the project.

RESOLUTION BOOK NO. 26 – PAGE 209

C. RESOLUTION NO. 00-204 - RESOLUTION SETTING A PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DIRECTING THE

2

DIRECTOR OF BUILDING SAFETY TO ORDER THE APARTMENT HOUSE LOCATED AT 135 MERRIMON AVENUE VACATED AND CLOSED UNTIL SAME HAS BEEN REPAIRED IN ACCORDANCE WITH THE CITY'S MINIMUM HOUSING CODE

RESOLUTION BOOK NO. 26 – PAGE 210

D. MOTION AUTHORIZING CITY STAFF TO PROCEED WITH AN ASHEVILLE HONORS PROGRAM

ORDINANCE NO. 2768 - BUDGET AMENDMENT FOR ASHEVILLE HONORS PROGRAM

Summary: There have been many individuals and institutions over the years who have assisted in the development and growth of Asheville. Individuals and institutions who have provided leadership in development, the arts, culture, the business world and in other ways have helped establish Asheville as a unique city in which to live, work and recreate. The purpose of the awards would be on an annual basis to select an individual(s) or institution(s) to be honored by the City for their contributions and to hold an appropriate awards ceremony to confer the awards. Staff has met with Mayor Sitnick, Mayor Ochsenreiter, Ms. Sara Bissette and Ms. Harriette Winner to discuss how such a program might work at the conceptual level. The group would recommend that the awards be selected by an independent committee and presented on behalf of the City of Asheville by the Mayor and City Council at the appropriate time.

Staff feels this is a worthwhile endeavor and would provide an additional avenue to recognize individuals and organizations who are so important to the community. If Council would like to pursue an Asheville Honors type of program, the following steps should be taken:

1. Approve a mission statement for the committee.
2. Approve operating principles to guide the committee.
3. Appoint a chair and ask the chair to appoint members to the committee subject to Council approval.
4. Approve a modest budget ($4,000) for the committee to begin their work and initially promote the program.

ORDINANCE BOOK NO. 19 – PAGE 6

E. RESOLUTION NO. 00-205 - RESOLUTION APPOINTING A MEMBER TO THE EDUCATIONAL ACCESS CHANNEL COMMISSION

Summary: The consideration of appointing a member to the Educational Access Channel Commission.

Ordinance No. 2554 adopted on March 9, 1999, established an Educational Access Channel Commission. On May 25, 1999, members to the Commission were appointed.

On October 11, 2000, Dr. Olin Wood requested that Mr. Rusty Holmes, Coordinator for Distance Learning, be appointed as one of the representatives of Asheville-Buncombe Technical Community College to replace himself. Mr. Holmes will be filling the unexpired term of Dr. Wood, whose term will expire on June 1, 2001, or until his successor is appointed.

Staff recommends City Council adopt the resolution appointing Mr. Rusty Holmes to the Educational Access Channel Commission.

RESOLUTION BOOK NO. 26 – PAGE 212

F. RESOLUTION NO. 00-206 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT IN FAVOR OF THE METROPOLITAN SEWERAGE DISTRICT TO MAKE IMPROVEMENTS ON A SANITARY SEWER LINE WITHIN RIVERSIDE CEMETERY

Summary: The consideration of a resolution authorizing the Mayor to execute an easement in favor of Metropolitan Sewerage District to make improvements on a sanitary sewer line and associated manholes within Riverside Cemetery.

During the past year the Metropolitan Sewerage District (MSD) has been working with the City of Asheville regarding a sanitary sewer project proposed within Riverside Cemetery. The current line is located along the southern portion of the cemetery adjacent to a creek which flows westward toward US 19/23. MSD would like to improve this line which is in disrepair with minimum impact to the property. MSD staff has met with City of Asheville staff representing the Parks and Recreation Department, Asheville-Buncombe Historic Resources Commission and the Tree Commission. The various divisions have worked with MSD to reach consensus regarding an appropriate design and implementation strategy that will enable the project improvements with minimal disturbance to the cemetery site.

The Parks and Recreation staff recommend the approval of the improvements as proposed by the Metropolitan Sewerage District in Riverside Cemetery along with the associated permanent easement for the new line of pipe.

RESOLUTION BOOK NO. 26 – PAGE 213

G. RESOLUTION NO. 00-207 - RESOLUTION ENDORSING THE CONCEPT OF AN ALTERNATIVE FUELED VEHICLES PLAN FOR ASHEVILLE'S VEHICLE FLEET AND LOCAL PARTNERS

Summary: The consideration of a resolution endorsing the concept of an Alternative Fueled Vehicles Plan for Asheville's vehicle fleet and local partners.

Vice-Mayor Cloninger has worked with City staff to develop a draft Alternative Fueled Vehicles Plan for Asheville's vehicle fleet and local partners. Alternative Fuel Vehicles for fleets have the potential to decrease air pollution in the community. Staff researched various alternative fuels, available equipment and potential funding. The State is providing grants for municipal fleets to convert to fuels or vehicles which reduce air pollutants. Also, Mission-St. Joseph and Buncombe County have expressed interest in participating with the City in such a program. Other potential partners are being solicited.

City staff recommends City Council endorsing the concept of an Alternative Fueled Vehicles Plan and authorize City staff to apply for grants.

RESOLUTION BOOK NO. 26 – PAGE 214

H. RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PERRY BARTSCH JR. CONSTRUCTION COMPANY FOR THE CONSTRUCTION OF RETAINING WALLS FOR THE SKATEBOARD PARK

This item was removed from the Consent Agenda due to a conflict of interest from Vice-Mayor Cloninger.

I. RESOLUTION NO. 00-208 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A DONATION OF REAL PROPERTY ON BROADWAY FROM MARK CARLSON FOR THE GREENWAY SYSTEM

Mr. Ed Vess, Field Services Coordinator said that this is the consideration of a resolution authorizing the Mayor to accept a donation of real property on Broadway from Mark Carlson for the City of Asheville greenway system.

The City of Asheville is interested in establishing greenways or greenway systems throughout the corporate limits of the City of Asheville. Real property has been acquired along Broadway and Reed Creek for the purpose of constructing a greenway. Mark Carlson has offered to donate property he owns (approximately 0.84 acre) on Broadway at and near the corner with Ocala Street (PIN Nos. 9649.13-13-7959, 8905, 8808, 8973 and 9837) for the greenway system. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the greenway system.

All of the donors to Broadway Greenway Project will be recognized at the groundbreaking ceremony.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on Broadway from Mark Carlson.

RESOLUTION BOOK NO. 26 – PAGE 215

J. RESOLUTION NO. 00-209 - RESOLUTION AMENDING THE SCHEDULED CITY COUNCIL MEETINGS

Summary: The following is the amended City Council meeting schedule: December 5, 2000, meeting cancelled; (2) December 12, 2000, worksession; (3) December 19, 2000, formal meeting; (4) December 26, 2000, meeting cancelled; and (5) January 2, 2001, meeting cancelled.

RESOLUTION BOOK NO. 26 – PAGE 216

K. RESOLUTION NO. 00-210 - RESOLUTION PROVIDING FOR THE ISSUANCE OF $1,970,000 GENERAL OBLIGATION BONDS, SERIES 2000 OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution providing for the issuance of $1,970,000 General Obligation Bonds, Series 2000 of the City of Asheville.

On October 10, 2000, City Council adopted Bond Orders authorizing the issuance of $1,300,000 Sanitary Sewer Bonds and $670,000 Equipment Bonds. Those Bond Orders became effective on November 13, 2000, 30 days after their publication during which period no valid petition to a vote of the people was filed with the City Clerk.

The resolution provides the particulars for issuance of the bonds, to include:

- $1,970,000 aggregate principal amount; in $5,000 denominations;
- Semiannual interest payment dates of December 1 and June 1, beginning June 1, 2001, and continuing through December 1, 2020;
- Annual principal payment dates of December 1, 2001 through 2020;
- Provides for early redemption after December 1, 2010 at a premium;
- Requires continuing disclosure of financial information;
- Provides the form of the bonds;
- Designates the bonds as "qualified tax-exempt obligations";
- Directs the Finance Director to establish special funds for the proceeds of the bonds;
- Requests the Local Government Commission sell the bonds through competitive bid;
- Authorizes preparation, execution and delivery of the bonds;
- Authorizes and approves the form and content of the Official Statement and Supplement to the Official Statement with changes, modifications, additions and deletions as deemed necessary by the Mayor, City Manager, or Finance Director;
- Authorizes the Mayor, City Manager, Finance Director and City Clerk to execute and deliver all certificates, documents, opinions or other papers and perform all other acts required in order to implement and carry out the purposes of the resolution.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 26 – PAGE 217

L. RESOLUTION NO. 00-211 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH DSATLANTIC CORPORATION TO PROVIDE PROFESSIONAL SERVICES TO THE CITY AND TO THE ASHEVILLE URBAN AREA METROPOLITAN PLANNING ORGANIZATION FOR THE UPDATE OF THE TRAVEL DEMAND MODEL

the consideration of a resolution authorizing the City Manager to execute a contract with DSAtlantic Corporation in the amount of $145,300 to update the travel demand model for the Asheville Urban Area Metropolitan Planning Organization (MPO), and an associated budget amendment.

As the Lead Planning Agency, the City of Asheville plays an integral part in the function of the MPO. The old Thoroughfare Planning Process that the N. C. Dept. of Transportation (NCDOT) has used is being revamped to reflect a more comprehensive approach to transportation planning. Our current Plan is in the process of becoming a Comprehensive Transportation Plan. One of the most valuable tools in evaluating how traffic is addressed, both in the present and in the future, is a valid travel demand model. Such models are quite complex and data intensive. They require staff that are dedicated and experienced to modeling. With the level of concern we have locally regarding the validity of our Plan and model, the NCDOT and the MPO agree that it would be very beneficial to utilize the professional expertise of consultants who specialize in modeling. City staff issued a Request for Proposals and have selected DSAtlantic. The NCDOT, the City and the MPO staff, all agree that DSAtlantic can complete this update in a timely manner.

The Federal Highway Administration and the NCDOT will reimburse the City of Asheville 80% of the cost of the contract. The total cost of the model update is $145,300. The maximum City's share would be $29,060, which is budgeted in the Engineering Department.

6

City staff requests that City Council authorize the City Manager to execute a contract with DSAtlantic Corporation, in the amount of $145,300, to update the travel demand model for the MPO and to adopt an associated budget amendment.

RESOLUTION BOOK NO. 26 – PAGE 218

M. ORDINANCE NO. 2769 - BUDGET AMENDMENT TO PARTIALLY FUND A CONTRACT WITH DSATLANTIC TO UPDATE THE TRAVEL DEMAND MODEL FOR THE ASHEVILLE AREA MPO

Summary: See Consent Agenda Item "L" above.

ORDINANCE BOOK NO. 19 – PAGE 8

N. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 28, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PROCEDURE FOR THE REVIEW OF LEVEL III SITE PLAN REVIEW PROJECTS

O. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 28, 2000, TO CONSIDER AN AMENDMENT TO THE UNIFIED DEVELOPMENT ORDINANCE REGARDING SETBACKS FOR MULTI-FAMILY STRUCTURES

P. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 28, 2000, TO AMEND FISCAL YEAR 2000 AND PRIOR YEARS COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ALLOCATIONS

Q. MOTION SETTING A PUBLIC HEARING ON NOVEMBER 28, 2000, TO REZONE PROPERTY LOCATED OFF POND ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT (MANUFACTURED HOME OVERLAY DISTRICT) TO COMMERCIAL INDUSTRIAL

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA TO BE DISCUSSED SEPARATELY

RESOLUTION NO. 00-212 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PERRY BARTSCH JR. CONSTRUCTION COMPANY FOR THE CONSTRUCTION OF RETAINING WALLS FOR THE SKATEBOARD PARK

Councilman Worley moved to excuse Vice-Mayor Cloninger from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Summary: The consideration of a resolution authorizing the City Manager to enter into a contract with Perry Bartsch Jr. Construction Company for the construction of retaining walls for the Skateboard Park.

In March of 1999, City Council approved the construction of a Skateboard Park to be located at the corner of Flint and Cherry Streets in downtown Asheville. This park will be constructed on property owned by North Carolina Department of Transportation. The development of the Skateboard Park has been on-going since 1997 when the Department began working with a number of individuals and groups interested in addressing the use of skateboards in the downtown area. This initiative led to the development of a temporary park located on top of the Civic Center parking deck which has proven to be successful with between 30 – 50 participants each day. The overall goal of the Task Force was the development of a permanent park. Construction on this park began in August, 2000, with the Department of Public Works installing storm drainage at the site. The next phase of development includes the construction of retaining walls throughout the park area. After completion of the retaining walls, the park will be ready for installation of the park surface which will allow for use by the skateboarders by late summer or early fall. Competitive bids were solicited for the development of the retaining walls with the low bid going to Perry Bartsch Jr. Construction Company at a cost of $252,775.

The Parks and Recreation Department has committed to raising funds for the park through a variety of means without the use of tax dollars. This fundraising effort continues and the Department is close to announcing a major corporate sponsor for the park. City Council approved the budget amendment for this park in 1999 with the understanding that funds would be reimbursed to the account by the above means.

The Parks and Recreation Department recommends City Council approve the contract with Perry Bartsch Jr. Construction Company, in the amount of $252,775, and that the City Manager be authorized to sign all contract documents.

Councilman Worley moved to adopt Resolution No. 00-212. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 219

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE A CONDITIONAL USE PERMIT TO CONSTRUCT A WAL-MART SUPERCENTER AT THE INTERSECTION OF GERBER ROAD AND HENDERSONVILLE ROAD

City Clerk Burleson and Deputy City Clerk Phyllis Corns administered the oath to anyone who anticipated speaking on this matter.

City Attorney Bob Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

All Council members disclosed that they visited the site. All Council members, except for Vice-Mayor Cloninger, met with Ms. Laurel Eide and Mr. Rusty Pulliam prior to knowing this project would come before City Council. All Council members have received numerous letters. Councilman Peterson disclosed that he talked with citizen groups limiting his remarks to only the process for conditional use permits.

8

Mayor Sitnick explained the procedures of this meeting. She said that the letters City Council received in the mail cannot be submitted as evidence. After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 5:28 p.m.

Planning & Development Director Scott Shuford that this is the consideration of an issuance of a Conditional Use Permit for the consideration of a conditional use permit as outlined in the Unified Development Ordinance (UDO) to construct a new 210,000 Wal-Mart Supercenter at the intersection of Gerber Road and Hendersonville Road. He submitted into the record the Affidavit of Publication (City Exhibit 1), the Certification of Mailing of Notice to Property Owners (City Exhibit 2), a Staff Report (City Exhibit 3), and a Revised Staff Report (City Exhibit 4). This public hearing was advertised on November 3 and 10, 2000.

On July 3, 2000, Wal-Mart Stores, Inc, submitted development plans for Level III site plan review for the proposed construction of a new 210,000 square foot Wal-Mart Supercenter on the site of the former Gerber plant. The Technical Review Committee (TRC) reviewed the plans at their meeting on July 17, 2000, and recommended approval with conditions. The applicant resubmitted plans that satisfy most of the TRC's conditions. If the Council approves this Conditional Use Permit, City staff recommends these conditions be part of the motion to approve.

In addition to the conditional use standards, the development must also comply with the supplemental development standards established for retail developments over 100,000 square feet. With the proposed architectural design and the site design, the development complies with the supplemental development standards.

In addition to the development standards for the zoning district in which they are located, conditional uses must meet certain general conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. The general conditions, which apply to all conditional uses, can be found in Section 7-16-2 (c) of the UDO. City Council must make seven findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case. The applicant has to demonstrate to City Council's satisfaction that the project meets these seven standards. Conditions can be imposed to enable those standards to be met.

Staff has attended a number of meetings and by far the most common concerns involve traffic impact and stormwater management issues. Long Shoals Road is scheduled to be improved under our Transportation Improvement Program in the very near future. Gerber Road will entirely be reconstructed by the applicant and the applicant will, under the conditions suggested by City staff, provide a fair share amount to the N.C. Dept. of Transportation to address impacts on Hendersonville Road and Mills Gap Road. With regard to stormwater impacts, the applicant has agreed, under the conditions suggested by City staff, to reduce the impact of the project to pre-development levels. Staff feels that that will help the current base situation that occurs there in addition to mitigating the impacts of the applicant.

Chief Planner Gerald Green said that Wal-Mart is seeking approval for the construction of a 210,000 square foot Supercenter on a 25.5 acre parcel located at the intersection of Hendersonville Road and Gerber Road (City Exhibit 5) and is also adjacent to the Norfolk Southern railroad line. A 1.65 acre outparcel fronting Hendersonville Road will be reserved for future development. The property is zoned Commercial Industrial and the use is a permitted use in the zoning district (City Exhibit 6). Due to the size of the proposed development, it is defined as a Level 3 project and is reviewed as a conditional use. Conditional uses are uses, which, because of their unique characteristics or potential impacts on the surrounding neighborhood and/or the city as a whole require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. The site plans for the proposed development were reviewed by the TRC on July 17, 2000, and recommended for approval with conditions. Revised plans submitted by the applicant meet most of the conditions identified by the TRC. Outstanding conditions recommended by the TRC, as well as additional conditions identified by staff, will be identified. If City Council approves this development and issues a conditional use permit, City staff recommend that the conditions be a part of the motion to approve.

He briefly went over the proposed design. The building will be finished in reddish Quick-Brick and gray smooth faced block with green accents (City Exhibit 7). The façade also incorporates several distinct massing elements and decorative metal fencing around the greenhouse area. There will be a transit stop with an awning from the edge of the sidewalk into the entrance to provide shelter for the bus riders. The 950 parking space area will be heavily landscaped, including a 50 foot wide buffer along the frontage roads and large interior landscape islands.

Access to the proposed development will be from Gerber Road, with three access drives planned. The first entrance will be right in, right out only. The second entrance will be the main entrance, and the third entrance will be primarily for truck traffic. A number of improvements are proposed for Gerber Road, including the addition of lanes and the construction of a roundabout at the main entrance to the proposed development. Stormwater management will be provided for the development in a manner sufficient to reduce the volume of the stormwater leaving the site to pre-development levels, a much higher standard than required.

Conditional uses must meet certain general conditions to ensure the proposed development is appropriate at a particular location and to ensure protection of the public health, safety and welfare. The general conditions are found in Section 7-16-3 (c) of the UDO. City Council must make seven findings based on the evidence and testimony at this public hearing or otherwise appearing in the record of the case. The standards and findings are as follows:

1. That the proposed use or development of the land will not materially endanger the public health or safety;

   The project received technical approval from the Water Resources Department, the Fire Department, Metropolitan Sewerage District, Engineering Department, and other City departments at the July 17, 2000, TRC meeting. The project must meet the technical standards set forth in the UDO, the Standards and Specifications Manual, the North Carolina Building Code and other applicable laws and standards which protect the public health and safety. The traffic impact analysis, prepared by the developer and reviewed by the City's staff, indicates that sufficient road capacity is available with the improvements proposed by the applicant and those required by staff to serve the project. Stormwater management will be provided for on site to bring the runoff to the level of pre-development runoff. This will result in a basin wide reduction in the stormwater, improving the situation on downstream properties, including Crowfields..

2. That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or the region;

   The project is a large-scale retail facility serving a regional market and is similar in character to several other retail developments in the vicinity.

3. That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

10

The size of the tract of land allows room for adequate buffering to alleviate impacts of noise and lighting on adjacent properties. Traffic impacts are an important consideration in Finding No. 7. Stormwater control measures will actually result in an improvement over the current basinwide stormwater conditions if the project is developed as proposed. The development is consistent with the zoning requirements for the property as well as in keeping with the corridor development pattern.

4. That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;

The property is zoned Commercial Industrial, which has no structure size standards. All of the neighboring property is zoned Industrial, Commercial Industrial or Highway Business and is for the most part already developed with large scale retail and industrial uses. Other developments in the area are of similar scale and density include:

- Wal-Mart Plaza – 160,000 square feet with 1,081 parking spaces;
- K-Mart Shopping Center – 141,000 square feet with 595 parking spaces;
- Ingles Shopping Center – 101,000 square feet with 401 parking spaces;
- Ball Plant – 235,000 square feet; and
- Old Gerber Plant – formerly 700,000 square feet with 450-500 employees; 350,000 square feet was demolished.

There is a 1.65 acre out parcel which is part of the Wal-Mart development; one of the recommended conditions of the conditional use permit is that any development of the outparcel be architecturally compatible with the proposed Wal-Mart building. In this way we can assure that it will be scale and harmony with the existing development.

5. That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City;

The City's Comprehensive Plan, the Asheville City Plan 2010, which is now 14 years old, and has been updated in most areas with the zoning applied as part of the UDO adoption and with subsequent rezonings. The subject property was rezoned approximately one year ago to permit commercial and industrial uses.

6. That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities;

The project received technical approval from the TRC, which includes representatives of the Water Resources Department, Metropolitan Sewerage District, Engineering Department, the Fire Department, and Public Works Department. The adequacy of the transportation facilities is addressed in a Traffic Impact Analysis conducted by the developer and supplemented by staff findings and requirements.

7. That the proposed use will not cause undue traffic congestion or create a traffic hazard.

A Traffic Impact Analysis (TIA) was submitted for the proposed development as required by the UDO (City Exhibit 8). In addition, the developer submitted an addendum to the TIA (City Exhibit 9) and another memo with additional analyses (City Exhibit 10). Staff review of the TIA concludes that it was completed using appropriate methods and offers a reasonable assessment of the traffic conditions in the site area. Several improvements to Gerber Road and the intersections on each end are recommended by the TIA to mitigate the traffic impact of the development. Staff worked with the developer to identify improvements to Gerber Road that would provide necessary

11

capacity and safety benefits but not create an unnecessarily wide roadway. The developer is offering to construct these improvements to Gerber Road, which will remain a public road providing a connection between Sweeten Creek Road and Hendersonville Road.

This development has the potential to exacerbate some existing LOS (Level Of Service) problems on roadways in the vicinity of the development. However, the conditions include requirements that staff feels will fairly mitigate these impacts. The widening of Long Shoals Road by the NCDOT will resolve LOS problems at the intersection of Long Shoals Road and Hendersonville Road. The recommended conditions require a pro rata contribution toward resolving the Mills Gap intersections' (with both Hendersonville Road and Sweeten Creek Road) LOS problems. The developer is proposing to correct the Gerber Road LOS problems by reconstructing Gerber Road. Stormwater retention proposed by the developer will improve area drainage conditions.

Staff recommends approval subject to conditions. If Council agrees and issues the conditional use permit, staff recommends the following conditions be part of the motion to approve.

1. The developer must pay all costs of signal upgrades necessary to accommodate the lane additions at the two signalized intersections on Gerber Road. In addition, the developer must also pay the costs of adding pedestrian signals to the signalized intersection of Gerber Road and Hendersonville Road.
2. The developer must pay $150,000 toward the planned signal upgrade for Hendersonville Road in the vicinity of the project. This money will be escrowed prior to receiving a certificate of occupancy for the building.
3. The developer must pay 7% of the cost of improving Mills Gap Road between Hendersonville Road and Sweeten Creek Road, not to exceed $150,000. A form of financial surety, such as a bond or letter of credit made payable to the City of Asheville, guaranteeing the payment of these funds must be provided prior to receiving a certificate of occupancy for the building. The financial surety must be valid for a period of five (5) years. At the end of the five (5) year period, the financial surety shall be renewed if the improvements to Mills Gap Road have not been initiated. Renewals of the financial surety may occur indefinitely until improvements to Mills Gap Road are undertaken.
4. The developer must submit a traffic control plan (TCP) for the reconstruction of Gerber Road before construction begins. The City Engineering Department must approve this TCP. Full closure of Gerber Road will be allowed only for a limited reasonable period of time as determined by City staff.
5. Before construction, detailed road design, signing, and striping plans must be submitted and approved by the City of Asheville (and NCDOT staff where necessary). These plans must show several items, including but not limited to:
    - A new roadway profile for Gerber Road.
    - Typical roadway sections that show widths of the lanes, median, gutter, planting strip, and sidewalk. These typical sections need to show the chosen pavement design and the planned cut and fill slopes.
    - Detailed layout of the roundabout showing appropriate connections to nearby road features and all the dimensions of the roundabout. If deemed necessary by the City Engineering Department and its consultants, the City may require the developer to retain the services of an experienced roundabout designer at the developer's expense.
    - Details showing appropriate handicap ramps and island cut-throughs for pedestrians. The handicap ramp shown in the current plans does not meet Americans with Disability Act regulations.

12

- Detailed signing and striping plans, especially as these items relate to the roundabout. Numerous additional signs will be necessary for the roundabout. All signs and markings will be installed at the expense of the developer.

6. To minimize the potential for traffic on the site to back-up into in the roundabout, extend the splitter island as a raised median from the roundabout to the end of the first parking lot island so that left turn movements will not be possible into the first parking bay. City staff has received a revised site plan showing that this condition has been met.
7. Bicycle racks shall be no farther than 50 ft. from a useable entrance to the building; some must be placed on the sidewalk near the store entrance.
8. Street lighting shall be provided the full length of Gerber Road with decorative fixtures to be approved by City staff.
9. Any development of the out-parcel must be architecturally compatible with the proposed Wal-Mart building.
10. Provide full details for lighting fixtures. Light poles cannot exceed 30 feet in height.
11. Full cutoff fixtures for parking lot lighting is required.
12. Provide details of trash receptacles.
13. Cart corrals shall be designed in keeping with architecture of the building, with the use of similar materials encouraged.
14. The monument sign shall be as shown on elevation drawing. All other signage shall be permitted in accordance with the City of Asheville sign standards.
15. A maintenance plan must be provided for the storm water management facility and for trash cleanup in the parking lot.
16. The boulevard-type planting median shall be extended along Gerber Road to the Norfolk Southern railroad right-of-way if physically possible. If extension of the planting median to this point is not possible, additional landscaping shall be provided along the edge of the road.
17. If grading is done within 15 feet of the property lines then the trees and shrubs which are replanted must be 25% larger than normally required.
18. Stormwater management shall be provided as if the lot were previously undeveloped.
19. The developer must build concrete driveway aprons per the City's standard (or other detail approved by the City Engineering Department) for the two existing gravel driveways on the South side of Gerber Road.
20. The "YIELD" markings in front of the building shall be painted white so that they will match the YIELD markings that will be required at the roundabout entries. Crosswalk markings are generally white as well and it is recommended that the wide pedestrian crossing areas in front of the store be striped in white paint.

Mr. Green answered various questions from Council, some being, but are not limited to: what problem does the roundabout solve, what are the pedestrian crossing amenities for the out-parcel, why does this proposed 210,000 square foot Wal-Mart have less parking spaces than the existing 160,000 square foot Wal-Mart, how do you access the 2.5 acre out-parcel and does the existing parking take into account the out-parcel, can City Council add additional conditions related to the development of the out-parcel, who determines the cost of improving Mills Gap Road between Hendersonville Road and Sweeten Creek Road, what kind of cash contributions is the developer making, does the City have a plan to use the transit stop at the proposed Wal-Mart and is there any additional expense to build this stop into the existing route, where is the access for the Ball Plant and if there is any development on the Ball Plant site, would they access onto Gerber Road; and, where is their stormwater detention facility.

Upon inquiry of Councilman Worley about how this project fits in with the City's smart growth concept and smart growth policy, Mr. Shuford said that the City has adopted interim smart growth policies that deal with development while we undergo a revision to our comprehensive plan and changes to the 2010 Plan. Before we can implement many of those

13

policies, we have to make changes to our Code requirements. For example, in this particular case, if, through our planning process, we felt this property should be reserved for a mixed use project or for an industrial project, then we would need to make subsequent zoning changes to reflect that. We feel that we have done the very best we could with this project with the design to incorporate a use that is actually going to contain a multiple number of internal uses that will minimize traffic stops and also to incorporate a lot of the density issues that are referred to in the smart growth policies. He said that the City is a regional part of our western North Carolina economy, and, as a result, we have to be in a position to accommodate big box type development in order to play that role. That is why we put in supplemental development standards - to try to make the big box developments that do occur in our City reflect a characteristic that is not a "this is anywhere type of place." In addition, City staff feels the provision of any of these big box developments be evaluated for mass transit alternatives.

City Traffic Engineer Michael Moule said that in reviewing the TIA, he estimates that there will be an additional 4,130 new trips each way.

He said that as directed by City staff, the traffic consultant analyzed three off-site intersections. These intersections include Hendersonville Road (US 25) at Mills Gap Road, Sweeten Creek Road (US 25A) at Mills Gap Road, and Hendersonville Road at Long Shoals Road.

- **Existing conditions**: The TIA found that under existing conditions these three intersections operate at level of service E or F, which is worse than the normally acceptable level of service D. Level of service F is the worst possible level of service, indicating an average delay per vehicle of more than 75 seconds.
- **2002 conditions without site traffic (Background):** As required by the UDO, the TIA also looked at traffic conditions in the build-out year (2002 for this project). As directed by City staff, the traffic in the build-out year was estimated using a 3% per year growth factor and adding traffic generated by nearby approved developments that have not been completed. During the build-out year, these three intersections are estimated to operate at Level of Service F, without the addition of the site traffic.
- **2002 conditions with site traffic (Combined):** Finally, the TIA looked at the traffic conditions during the build-out year with the site traffic included. All three intersections are estimated to operate at Level of Service F but with even greater delay to traffic.
- **Recommended improvements:** The TIA recommended numerous improvements at these three intersections including several approach lane additions that would be necessary to bring conditions to level of service D without the site traffic included. However, neither the City of Asheville nor the North Carolina Department of Transportation (NCDOT) has plans or the necessary resources to construct any of these improvements by the time this development is planned to be completed. In addition, the developer has not offered to construct any improvements. City and NCDOT staff realize that these improvements would be difficult for the developer to construct since acquisition of additional right-of-way is necessary to construct these improvements. However, some contribution of funds to improve the traffic conditions near the site commensurate with the development's impact on the roadway is appropriate. Three specific areas for improvement are discussed below.
    - **Planned Nearby NCDOT road widening project:** The NCDOT has plans to widen Long Shoals Road with a project that is scheduled to be completed relatively soon after the planned completion of this development. Two additional approach lanes are planned on Long Shoals Road at Hendersonville Road. These lane improvements should improve the traffic conditions at this intersection. This project is already fully funded and is some distance from the development site, so no contribution by the developer is suggested at this time.

- **Proposed NCDOT signal improvements on Hendersonville Road:** The NCDOT is proposing to add a closed loop signal system from the Blue Ridge Parkway to Mills Gap Road. This project would include upgrading all of the signals to current standards and the installation of pedestrian signals. The estimated cost of this project is $450,000 to $500,000. This project is planned in order to accommodate the increasing traffic volumes in this area. According to the numbers in the Traffic Impact Analysis, the Wal-Mart development will increase traffic at various locations on Hendersonville Road by 6% to 8%. The estimated increase in traffic based on other factors from now until the build-out year is approximately 12% to 19%. Therefore, it is proposed that the developer fund approximately one third of the proposed signal upgrade project. A recommended condition on the issuance of a conditional use permit for the development reflects this proposal.
- **Mills Gap Road widening:** The Metropolitan Planning Organization (MPO) has included a project on its priority needs list to widen Mills Gap Road from Hendersonville Road to Sweeten Creek Road. This project has not been placed on the Transportation Improvement Program (TIP) by the NCDOT at this time. City staff is going to encourage the MPO to encourage the NCDOT to add it to the TIP because it is one of the most congested areas in our City. However, it is possible that this project or a similar one to improve conditions on Mills Gap Road would be completed within a reasonable amount of time. According to traffic volumes in the TIA, the development's traffic impact will be approximately 7% of the total traffic at the intersections of Mills Gap Road with Hendersonville Road and Sweeten Creek Road. City staff calculated a project cost estimate of $2,000,000 to widen Mills Gap Road to three (3) lanes between Sweeten Creek Road and Hendersonville Road, add a westbound right turn lane at Hendersonville Road, and eastbound and westbound right turn lanes at Sweeten Creek Road. The developer should pay 7% or approximately $150,000 of the cost of this road improvement project. If these monies are not expended within a five year timeframe, they should be returned to the developer with interest. A recommended condition on the issuance of a conditional use permit for the development reflects this proposal.
- **Sweeten Creek Road:** Sweeten Creek Road is planned to be widened, however, it looks like it won't be for another 7 or 8 years. Since it is so far in the horizon, City staff is not recommending the developer contribute to this project.

Mr. Moule answered various questions from Council, some being, but are not limited to, does City staff have any idea when the three off-site intersections might be funded and constructed to bring them to a LOS D; what does over-saturated in traffic terminology mean; how far is Mills Gap Road from Gerber Road; where does the traffic come from on Mills Gap Road from Hendersonville Road to Sweeten Creek Road; is there a lot of traffic that uses Gerber Road now that would move to Mills Gap Road; what is the effect of this project on Mills Gap Road; has an analysis been done on the current traffic at the existing Wal-Mart and will that traffic shift to the proposed Wal-Mart; and is the left turn lane as it exists now on Gerber Road going north on Sweeten Creek Road adequate.

Councilman Hay if there are any other improvements which would make the traffic situation better that are not listed in the conditions. Mr. Moule said that there was some discussion about having Wal-Mart build lane improvements at Mills Gap Road and Sweeten Creek Road, but the developer indicated that they didn't feel they could do that, so City staff looked at other possible ways to mitigate the traffic impact. In this case, it is the contribution to what we hope will be a future project on Mills Gap Road.

Mr. Scott Stannard, Freeland and Kauffman, said that they feel this building will be a beautiful addition to this community (Applicant Exhibit 1). With regard to traffic concerns, they did perform a TIA and have come up with improvements that City staff and the NC DOT feel need to be done in order to accommodate the traffic to this site. They are physically rebuilding Gerber Road to three and four lanes as required, working on the two traffic signals at each end of Gerber Road, and donating $300,000 for two NC DOT projects. They are in agreement with the Condition No. 3. With regard to stormwater, the stressed the site will be built to its pre-development status and the system has been designed to handle the 100 year storm, which is above and beyond the City standards. With briefly pointed out some site plan standards. He said that even though this is a big store, it is a reduction of what was on the site - the existing Gerber Plant was over 300,000 square feet and the proposed Wal-Mart is 210,000 square feet. He does feel that they will fit in with the surrounding community and urged Council to issue a conditional use permit.

Councilwoman Bellamy asked Mr. Stannard why Wal-Mart chose not to expand on their existing site on Hendersonville Road. He responded that the expansion is basically the addition of a grocery box. The existing site was too confining and they couldn't build an expansion that would make economic sense. However, he explained that part of the Wal-Mart program is to expand on existing sites, if at all possible.

Upon inquiry of Councilman Peterson and Councilwoman Field, Mr. Stannard basically explained how the stormwater pond is designed.

Mr. Ramey Kemp, Ramey Kemp & Associates, Inc., Consulting Engineers, showed Council the proximity of Gerber Road to Mills Gap Road (Applicant Exhibit 2 – Copy out of Traffic Impact Analysis Report which is City Exhibit 8). He pointed out that Hendersonville Road is a five-lane roadway that has adequate capacity to handle the traffic that is there now, the adjacent traffic that they've added to it from other developments, plus the Wal-Mart traffic. The question is whether there is additional capacity on the side streets. The key point is that they have done what needed to be done on Gerber Road to improve that capacity. Plus, the developer has offered money to make additional improvements on Mills Gap Road. The reason they didn't offer to make any improvements in the northbound direction at the intersection of Sweeten Creek Road and Gerber Road is that there is already an existing left-turn lane on that roadway.

Ms. Dafney Davis, Community Affairs Manager for Wal-Mart Stores Inc., explained why Wal-Mart wants to pursue this project. Wal-Mart is committed to their customers, their associates and their communities. They want to relocate to this new facility to better serve their customers. They need to expand to continue serving their customers in a manner they expect. They hear requests for additional merchandise, groceries and services, like wider isles. This facility will also give them the opportunity to expand their work force. Wal-Mart's positions are about 70% full-time and 30% part-time. Wal-Mart employs more people in this country than any other private business – only the federal government employs more people. Wal-Mart offers a comprehensive package for health insurance, profit sharing, 401-K plan, a discount on company stock and a number of other benefits. This project will also give Wal-Mart the opportunity to expand their involvement in the community as the stores are encouraged to participate with local non-profit organizations.

Upon inquiry of Councilwoman Field, Ms. Davis said that if the City does not issue a conditional use permit to Wal-Mart for this store, they will pursue some other relocation area. Most of their energy is focused on this project, however, if this does not work out, they will look at the option of relocating outside the City limits. With regard to two sites Wal-Mart was looking at to relocate in the City of Asheville, Ms. Davis stated that they are still looking at the Sayles Bleacheries site location, however, things are not moving forward right now. She believes both

Supercenters can be very successful. With regard to economic impact, she said there will be an increase in sales tax but the primary difference will be the addition of grocery.

Councilwoman Bellamy asked how many new employees would be hired. Ms. Davis said that they will hire approximately 500 new employees because they like to promote from within. Ms. Davis explained why they do not provide an average salary, however, all Wal-Mart associates are paid above the minimum wage.

Mr. Craig Justus, attorney representing Wal-Mart and the property owner who owns the site where the Wal-Mart project is proposed, stressed this is a conditional use permit process, not a popularity contest. There are standards in the UDO and those are standards are set out for any developer to follow so City Council can give a fair application of rules to everyone. Wal-Mart has met all the technical standards in the ordinance. What is left is to look at the seven conditions which must be met in order to issue a conditional use permit. Others may say that the property should be used for industrial purposes and that it is not suitable for commercial use, but those comments will not be relevant to City Council's consideration. He explained that those are policy decisions that City Council makes when they rezone property. Approximately a year ago they came before City Council regarding this property, which was all zoned industrial, and there was great discussion at that time on what would be best for this entire piece of property. City Council decided that it would be appropriate to split-zone this property, retaining a tremendous amount of the property for industrial purposes (405,000 square feet immediately to the north). City Council rezoned this acreage to allow more flexibility and to allow a developer to come in and develop it for commercial uses (Applicant Exhibit 3). Those policy choices were made a while back.

Mr. Justus said that he felt the traffic will be the principle issue. He said it was important that the Council focus in what the requirements are in the ordinance. People will say the existing traffic in the area is a problem and therefore Council should not allow a Wal-Mart. The standards in the ordinance ask if Wal-Mart is causing the problem and the answer is no. After numerous meetings with staff, hiring a traffic consultant, and preparing a TIA and various revisions, Wal-Mart and City staff have agreed to certain conditions. Hendersonville Road and Sweeten Creek Road have adequate capacity to serve this property at a Level of Service D which level is typically found in an urban area. In terms of expansion and improvements to Gerber Road, the issues were identified and Wal-Mart has agreed to do all the improvements that were requested by City staff. Wal-Mart has never said no to any of the conditions. He said that Mr. Moule's comment that Wal-Mart refused to do physical improvements to Mills Gap Road is not correct. The statement should have been, it was determined that Wal-Mart would have a 7% impact on traffic on Mills Gap Road. Mills Gap Road is an existing problem – not caused by Wal-Mart. In the Asheville Urban Area Thoroughfare Plan (Applicant Exhibit 4), Mills Gap Road has been identified as a problem at least back to 1989 and that improvements need to be done. He hoped that City Council would not hold Wal-Mart at fault for the existing problem with Mills Gap Road, when (1) it doesn't provide the direct access to the property and (2) Wal-Mart is only contributing 7% of additional traffic on that road. This is unprecedented in the City of Asheville that a developer has stood up and said he would contribute money to what their traffic impact will be on side streets that are 1/4 mile away from the property. The reason Wal-Mart can't do physical improvements to Mills Gap Road is because it is controlled by the NC DOT. If the City of Asheville controlled that right-of-way, then more than likely the City would have been planning for improvements to Mills Gap Road a long time ago. The City's only power is to talk with the NC DOT and try to convince them to do improvements. Again, Wal-Mart has identified how much traffic it will add to Mills Gap Road and has said they will pay their share of those improvements. It's not fair to ask Wal-Mart to acquire right-of-way and build a new Mills Gap Road when only 7% of increased traffic is attributable to this site. They are willing to pay their fair share. He stated that if this Council wants to impose reasonable conditions that tie it to the proportional impact for Wal-Mart, they will agree to pay. In terms of signalization, he said that in

17

the Thoroughfare Plan it talks about a "wish list" for the City of Asheville, one of which is signalization along Hendersonville Road. Wal-Mart is contributing money in order for that signalization to take place. Mr. Moule has indicated that growth is happening in south Asheville without Wal-Mart. Mr. Moule identified that during the period of build-out for Wal-Mart, there be projected a 21% increase in growth in traffic in that area. Wal-Mart is only contributing during the build-out period 1/3 of that 21% and Wal-Mart has been tagged with the money to pay for that 1/3 increase over the build-out period. You are not seeing the other 2/3 that will be causing the growth during this period of time paying their share. The residential growth, building of office parks and a pharmacy going on out there are not paying for what they are causing in terms of impacts. Again, Wal-Mart has identified it's impact it will have on these roads and is paying their fair share. To ask Wal-Mart to build new roads for the City of Asheville is not fair to Wal-Mart. He asked Council to look at the element of fairness and it's own standards and to say Wal-Mart has caused the problems out there is not fair. If Wal-Mart is not issued a conditional use permit, it will potentially build on the outskirts of the City of Asheville and that is where you get urban sprawl. Council needs to place the multi-use center where the people are, not on the outskirts of town.

Mayor Sitnick said it was great that Wal-Mart is going to pay some impact fees. However, in all fairness, it takes years for projects to come to fruition, even when they get on the TIP, and if Wal-Mart is paying 7% which is indeed their impact, the taxpayers pay for the rest of that impact. She noted that the City taxpayers pick up a lot of the cots for use of Asheville as a western North Carolina and regional hub.

Vice-Mayor Cloninger said that the City's Sustainable Economic Development Plan has been referred to and asked that it be included as part of the record (City Exhibit 11).

Throughout the public hearing process, City Attorney Oast cautioned Council about receiving information from people who are not present.

The following individuals spoke in opposition of granting a conditional use permit to Wal-Mart to construct a Supercenter at the intersection of Gerber Road and Hendersonville Road, for several reasons, some being, but are not limited to: there is an existing Wal-Mart; the immense economic power eliminates competition; well-paying jobs will be lost or traded for low-waged benefit positions; property tax revenues will fall because abandoned businesses and property values will decline; Sweeten Creek Road is the artery used for tractor trailers into and out of Wal-Mart for supplies; Wal-Mart should build a connector road to make up for the one they are losing – Gerber Road; there is existing traffic congestion in the area; they generate abandoned shopping areas; anxiety levels caused by crime taking advantage of the all-hours opportunity and crowd anonymity; major losses in economic potential to south Asheville; increased tax revenue is a myth; increase in crime; road maintenance will cost more; Sweeten Creek Road is already dangerously overloaded and will take burden of the increased automobile traffic; taxpayers are asking to pay for expenses caused by arguably the wealthiest corporation in the world; de facto loss of Gerber Road as the only connector between Sweeten Creek Road and Hendersonville Road for two miles; sales tax revenues may actually fall because money spent at Wal-Mart leaves the community; there are approximately 2,400 residents that live along Hendersonville Road and they have no pedestrian accommodations of sidewalks or crosswalks, Hendersonville Road speed limits needs to be reduced; South Asheville does not need a Supercenter because there are already four supermarkets within a very close distance; while south Asheville is waiting for proposed traffic improvements, the south Asheville residents are jeopardized by that delay and by Wal-Mart's increase in traffic; multiple references in the Sustainable Economic Development Plan for the need to preserve industrial spaces; even though the Stormwater Management and Erosion Control Report by Freeland & Kauffman is in conformance with the City guidelines and specifications, however the engineer's study is narrowly confined to the bounds of the site; the holding ponds are too small to adequately handle realistic runoff from the site; neither the developer nor City staff has shown that the existing downstream flood danger from cumulative development has been adequately modeled or is mitigated by the proposed project; increased traffic on Hendersonville Road, Sweeten Creek Road, Mills Gap Road , Rock Hill Road, Overlook Road, Rosscraggon Road, etc. with addition of Wal-Mart Supercenter; increase in traffic will compound congestion and already hazardous driving conditions; leaky radiators and oil pans will also be in the water runoff; this proposed development does not conform with the Sustainable Economic Development Plan; the three intersections at gridlock are not likely to be any better with anything that can be done with them, including the roundabout; Wal-Mart only pays only slightly above minimum wage and out of that is taken the benefits and most people who work there are held to 3/4 of a 40 hour week; concerns about notice given when the rezoning of the property took place over a year ago; Wal-Mart Supercenter by-laws note that Supercenters not be built with a 30-mile radius of one another; upscale stores rarely want to locate near Wal-Marts but would provide a stronger economic base and better working conditions for citizens in our area; other large department stores have multiple entrances into their store to deflect traffic; Gerber Road is going to be a privatized road; traffic increase deteriorates the already failing level of service with greater delays and delays in obtaining fire, police, and ambulance service; added pollution generated harms citizens and plant life; services proposed by Wal-Mart are already established and in sufficient quality and in equally or more accessible areas; within 3 miles of the site there are five grocery stores, two department stores, five pharmacies, numerous service stations, restaurants, retail shops, beauty shops, banks, travel agent, ten beauty shops, and many more businesses; the sudden increase of commercial space will lead to vacancies in existing buildings and failures of existing shops; the existing Wal-Mart on Hendersonville Road has the potential to be more of a visual blight when left empty; the site is best used for industrial purposes; Gerber Road looks like a service entrance for Wal-Mart; the people who live north of Gerber Road on Sweeten Creek Road are being denied the access they deserve to the existing businesses on Hendersonville Road; the number of jobs created by the new Wal-Mart will perhaps equal the number that will be lost so there will have been no enhancement to this community; since the proposed Wal-Mart will be open 24 hours and is significantly larger than any other businesses in the area, it will not be in harmony with the neighborhood; increased air pollution; grid-lock traffic; more accidents; inability to get out of neighborhoods because of traffic; 24 hour noise from a 24-hour large operation with a minimum of 100 additional trucks a day and 4,000 additional cars or small trucks; bright lights; rats from usual mess behind Wal-Mart stores; future zoning changes of this type of complex will bring to further degrade the neighborhood until it becomes another Tunnel Road; there has been no environmental assessment performed; the retirement community contains aging people and their reflexes are slower and they have anxiety when it comes to large traffic and they already have difficulty into merging into what is already in the area; there is no traffic light for the residents of Racquet Club Road, however, there are 6 traffic lights within 350 yards from each other on Hendersonville Road; box stores do not fit into Asheville's vision; the Wal-Mart Superstore will not improve the quality of life for Asheville residents; people from Fletcher, southwest Buncombe, etc. will take I-26, then to Long Shoals Road to Overlook Road to Hendersonville Road and Overlook Road is a small, dangerous road; NC 25 and 25A, Patton Avenue and Tunnel Road are examples of roadways that experience the greatest traffic congestion and greatest frequency of motor vehicle accidents; this project is too big for Gerber Road; this large of project should be built next to an interstate; there will be a lot of truck traffic coming off of the new Interstate Exit on I-40 on Sweeten Creek Road; a serious existing traffic problem already exists in the area now; traffic needs to be fixed before additional incremental development is approved; a small increment in volume can cause dramatic increase in delay; there is a serious need to look at the accident history at these intersections; study needs to be further made to address the rail traffic and the interconnection of the railroad signals with the highway signals at Sweeten Creek Road and Mills Gap Road to see if queues are going to be so severe that there may need to be some relief; municipal governments can deny conditional use permits based on very similar circumstances; there should be a moratorium on big box development in the City until the people together decide what they want to do on this

19

issue; research on big box development reveals negative impacts on the community with regard to wages, benefits, taxes and land market impacts; there will be an increase of traffic on Sweeten Creek Road which has greatly accelerated since the opening of the new I-40 ramp located at Sweeten Creek Road; women do not benefit from the type of jobs generated by large retailers such as Wal-Mart; Wal-Mart is indifferent toward the safety of employees and customers; when resources are utilized to construct a large shopping store, more minerals are mined, more plastics are created, more trees are cut down, more fossil fuels are burned – all of which are destructive to the environment in general; statistics show that for every two jobs Wal-Mart supplies, three are lost in the surrounding community; Wal-Mart is an anti-union employer; safety of the children who ride school buses on these roads should be considered; the size of the project is not compatible with other businesses in the area; Mills Gap Road will have to absorb the displaced traffic from Gerber Road; Sweeten Creek Road traffic must be addressed before considering a project of this size; you cannot count on the mitigation improvements by the NC DOT happening in a timely way to keep traffic from getting much worse; the City has a lack of suitable sites for desired industries and businesses within the City; left turn lane going north on Sweeten Creek Road and Gerber Road is not adequate; the existing Wal-Mart's parking lot is never more than half full thereby showing them they don't really need to expand; residents in the area already pay their fair share through their taxes; there will be construction traffic in the area while the project is being constructed; there has not been an analysis performed for the increased traffic on Sweeten Creek Road due to the new I-40 interchange; there will be no allocation of funds to any of the roads until the year 2008, which means that the residents will be impacted for several years after this development is open and doing business; 10-20 smaller businesses will close because of their inability to compete fairly with this discount Supercenter; and of 390 abandoned stores left by Wal-Marts to move into Supercenters, 13 are in North Carolina, and not including the businesses that closed within the strip malls:

Mr. George Clark, 95 Ballantree, representing Upper Ballantree Citizens for Better Planning
Ms. Anne D. Campbell, 102 Crowfields Drive (Neighborhood Exhibit 1)
Ms. Lillian Hamilton, 83 Hollybrook Drive
Mr. A. James Siemens, Attorney for Crowfields Condominium Association
Mr. Nathaniel B. Guttman, Consultant to Siemens Law Office P.A. (Neighborhood Exhibit 2)
Mr. Kenneth M. Partin, Executive Director of Givens Estates (Neighborhood Exhibit 3)
Representation of the Southern Appalachian Biodiversity Project
Mr. Andrew Houston, representing Smart Growth Partners (Neighborhood Exhibit 4)
Mr. Jim Christian, resident of Ballantree Subdivision
Ms. Cynthia Thornton, President of the Ballantree Homeowners Association (Neighborhood Exhibit 5)
Ms. Donna W. Kelly, member of the Black Mountain Swannanoa Valley Land Use Task Force (Two Neighborhood Exhibits 6)
Mr. George Rebow, resident of 7 Elmwood Lane
Ms. Carita A. Bird, resident of 18 Clubhouse Court (Neighborhood Exhibit 7)
Ms. Elizabeth Cohen (Neighborhood Exhibit 8)
Ms. Carol Heid, resident at 56 Park Avenue (Neighborhood Exhibit 9)
Mr. Jim Heid, resident at 56 Park Avenue (Neighborhood Exhibit 10)
Ms. Maureen Christian, resident at 3 Elmwood Lane
Ms. Margaret Shook, resident at 709 Crowfields Lane (Neighborhood Exhibit 11)
Ms. Julie Brandt, resident at 71 Pine Forest Drive in Weaverville (Neighborhood Exhibit 12)
Ms. Maria Young, resident at 16 Oakwilde Drive (Neighborhood Exhibit 13)
Ms. Laurel Eide, resident at Blake Mountain Estates (Neighborhood Exhibit 14)
Mr. Jim Torpey, resident at 7 Gardenwood Drive

Mr. Richard Green, representing the Southside Village Homeowners Association
Dr. David B. Clarke, Professor at Clemson University in the Civil Engineering Department (Neighborhood Exhibit 15)
Mr. Lyman Gregory, attorney representing Citizens for Health, Safety and Welfare (Two Neighborhood Exhibits 16)
Ms. Rebecca Campbell, representing Southeast Network for Intentional Communities (Neighborhood Exhibit 17)
Mr. Adam Balus, representing Earth First (Neighborhood Exhibit 18)
Mr. Bill Fesperman, representing New Hope Presbyterian Church (Neighborhood Exhibit 19)
Ms. Lisa Schiess, representing Community Supported Development (Neighborhood Exhibit 20)
Ms. Sharon K. Martin, representing Asheville Direct Action Network (Neighborhood Exhibit 21)
Ms. Shirley Fetter, representing Spruce Chase, LLC, (Neighborhood Exhibit 22)
Mr. Cicada LaFey, resident at 362 London Road (Neighborhood Exhibit 23)
Ms. Lola LaFey, resident at 362 London Road (Neighborhood Exhibit 24)
Ms. Janet Price-Ferrell, resident at 3 Ballantree (Neighborhood Exhibit 25)
Ms. Laura Whitley, worker in south Asheville
Ms. Betty Lawrence, resident on Hillside Street (Neighborhood Exhibit 26)
Mr. John Traw, resident in Park Avenue (Neighborhood Exhibit 27)
Ms. Gail Moody (Neighborhood Exhibit 28)
Mr. Roger Smith, resident at 9 Stockwood Road
Ms. Lynn Johnson, resident at 291 East Chestnut Street
Ms. Darcel Eddins, representing the Western North Carolina Green Party (Three Neighborhood Exhibits 29)

Mr. Fred English, resident at 17 Pressley in Haw Creek, spoke in support of the Wal-Mart Supercenter stating that the area needs a Wal-Mart.

Mr. Justus said that Mr. Jackson Ward has an ownership interest in the property that Wal-Mart is proposing for the site and he also has an ownership interest in a considerable portion of Mills Gap Road. Since the a major issue of concern is the traffic on Mills Gap Road, he asked City Council to consider a one month continuance so that they can explore with City staff and the NC DOT the possibility of improving the situation on Mills Gap Road, even though they contend they are contributing what their impact will be to that Road.

When Mr. Stannard asked if Mr. Guttman was a professional engineer, Mr. Guttman replied that he is not, but he is a scientist. Mr. Stannard said that he is registered professional engineer in the State of North Carolina along with ten other states and they have been building Wal-Mart stores for about 12 years. They have built over 150 of them so they have very vast experience in stormwater design. He said that they would be willing to provide further studies downstream, since they are designing this pond system for the 100 year storm, which is higher than to the City's standards of a 10 year storm. He corrected a technical error regarding information based on North Carolina Sedimentation and Erosion Control Handbook. He explained the rational method vs. the SCS method. In addition, Mr. Guttman's report states that downstream flooding potential should be considered. That is not disputed, however, all of the comments made in his report are based on the assumption that there is flooding downstream caused by the Gerber site and he would refute that.

Mr. Justus confirmed with Mr. Shuford that, in terms of a condition within the control of Wal-Mart, there is no condition that is more stringent than developing a stormwater management system at pre-development conditions, which Wal-Mart is required to do.

Mr. Ken Putman, Division Operations Engineer with the NC DOT, said that with regard to the railroad issue, the existing signal at Gerber Road and Sweeten Creek Road has been there for about nine years. It is state policy, based on the national manual, that NC DOT only considers railroad preemption when the railroad crossing is 200 feet or less to the intersection. In this case it is greater than 200 feet and that is why the railroad preemption was not put in in 1991. As far as he knows, they have never had any type of problem there from the initial installation to the present time.

Mr. Putman said that the NC DOT has been watching the intersection at Mills Gap Road and Sweeten Creek Road and they do recognize there are problems there. This spring they did revise that signal. Previous to that, they have tried to do some widening on Mills Gap Road for the heavy right turn that comes to get on northbound Sweeten Creek Road. They have widened just about as much as they can without moving some major utilities, including a gas line. At their November board meeting, $100,000 was approved for them to do additional lane improvements along that section. What they plan to do with that money, assuming they can get the right-of-way established, is to finish the widening between Gerber Road and Mills Gap Road and have a full three lane section. That can probably be built in the spring.

Mr. Kemp responded to a concern about the left turn lane on the Gerber Road/Sweeten Creek intersection may be too short. He said if that is the case, they will look at it. He said that Norfolk Southern said they would furnish more detailed information regarding the number of trains that cross the railroad track, however, until NC DOT says otherwise, the best solution is to do what they are proposing, which is to try to put enough storage in the right turn lane off of Sweeten Creek Road into the site. And, enough storage in the left turn lane coming into Gerber and going into the site to provide for storage of vehicles when there is a train crossing there. With regard to Overlook Road (Applicant Exhibit 5), he felt that the Wal-Mart traffic would not have a big impact on that road. With regard to driveways into the site, he said there are actually three, which is normal for a retail center of this size. In addition, they have a truck access in the rear near the railroad tracks. The TIA analyzed five intersections and two were on Sweeten Creek Road.

Mr. Justus entered into the record a photograph of the Gerber Plant site prior to its demolition which reflects the bulk of the building that existing on the site (Applicant Exhibit 6). He also entered copies of the Purchase Agreement (Applicant Exhibit 7) and First Amendment to Purchase Agreement (Applicant Exhibit 8) to show the relationship between Wal-Mart and Asheville Hendersonville Investors, LLC. Asheville Hendersonville Investors LLC is the seller of this property and Wal-Mart is the purchaser of the property. This is a purchase agreement arrangement, not an option arrangement. Once all the conditions have been met, Wal-Mart has an obligation to buy this property. All the conditions of this agreement have been satisfied, except for the application of this site plan and the issuance of the conditional use permit.

Mr. Moule responded to questions from Ms. Young on why Overlook Road and Hendersonville Road was not included in the TIA. He also responded that the UDO requires developers to perform a TIA. That analysis was performed by the traffic consultant hired by Wal-Mart, as per the standards outlined in the ordinance and under the guidance of City Engineering and Planning & Development staff, in conjunction with the site plan. That is why there were subsequent submittals because the City did not get the answers they wanted the first time.

With regard to a question from Ms. Eide, Mr. Stannard said that there is an access Gate 30 which comes by the warehouse. He talked to the property owner last week. The gate sits adjacent to where the stormwater ponds are going to be. It will remain open as a temporary access during construction so that the property owner can access his warehouse. They will eventually take that access road out when the development is complete.

Mr. Moule then responded to questions from Ms. Thornton regarding the TIA and what areas were and were not included in the study (Neighborhood Exhibit 30).

Mr. Guttman said that he is a scientist, not a registered engineer. He said he was an expert in the creation and use of the curves that was used in the model. The said the curves, whether they came from the state or the City, are out of date, in terms of the data that they used to generate them and the methods as well. The plan, while he agrees in concept, has some very bad input data. What was not considered with regard to the downstream flooding was the holistic approach in that prior to the widening of US25 there were certain drainage features in that whole basin. After the widening of Hendersonville Road and the rapid expansion of development from the top of the mountain on down to the road, the characteristics of the whole Busbee drainage system have changed and those were not considered at all. It's that area holistic approach which is creating a flooding, not the site itself.

Dr. Clarke said he was glad at least some consideration was given to the railroad crossing issue. He said it is 224 feet from the stop bar at the intersection of Gerber Road from Sweeten Creek Road back to the railroad crossing, which is just outside the 200 foot distance mentioned by Mr. Putnam. We are right at the threshold of something that needs to be looked at.

City Attorney Oast outlined the options available to Council. One is that after hearing closing statements, the Mayor can close the public hearing and Council can vote on what it has heard at the public hearing tonight and direct staff to come back with findings and conditions as appropriate. The ordinance needs to pass at least with a 2/3 vote to avoid a second reading. Council usually directs staff to develop findings and to come back to City Council and that could constitute a second vote. Another option for Council is to continue the public hearing for the limited purpose of receiving new information on Mills Gap Road issue. If Council chooses that option, Council should allow arguments to be made after they receive that information and the public hearing should remain open until then.

Councilman Worley said that he would be inclined to continue the public hearing and that it be limited in terms of receiving additional input as a result of the new information. He would like the opportunity to see what the additional information will be presented and also to review the Sustainable Economic Development Strategic Plan.

Mr. Shuford said if Council chooses to continue the public hearing with the idea of getting more information about the Mills Gap Road improvement proposal, he said there were other issues he noted that Council may want additional information on. Those issues being (1) the railroad safety issue which may merit some additional comment by the applicant; (2) whether or not the store, which will be vacated by Wal-Mart if this project is approved, will stay vacant as a result of a continuation of a lease; (3) since there is a willingness to do further stormwater assessment on the part of the applicant, some of the issues Mr. Guttman raised could be addressed; (4) the Sweeten Creek Road issue with regard to the fact that there could be a three lane configuration of the roadway segment between Mills Gap Road and Gerber Road; and (5) the issue with regard to Gate 30 and how that would get resolved. Council may wish to get these additional issues addressed if the public hearing is continued.

Councilman Hay said that if the public hearing is going to be continued, he would be interested in knowing whether the Sweeten Creek Road interchange will make a difference in this project. He would also like to know more about exactly what the NC DOT schedules are or are not on the widening of Sweeten Creek Road. In addition, he would be interested in hearing more about the stormwater issue and City staff's evaluation of the engineering report and whether or not it will do what it proposes, which is to bring the site back to pre-development stage.

Mayor Sitnick said that if a continuance is approved, she would like more information regarding emergency vehicles being able to reach their destination quickly.

Councilman Worley moved to continue the public hearing until December 19, 2000, in order to hear responses to the issues outlined above by Mr. Shuford, Councilman Hay and Mayor Sitnick. This motion was seconded by Councilwoman Field. Said motion failed on a 3-4 vote, with Councilwoman Field, Councilman Hay and Councilman Worley voting "yes" and Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Bellamy and Councilman Peterson voting "no."

Mr. Justus reiterated that there are certain standards in the ordinance that everyone is required to follow and City staff has indicated that Wal-Mart has met all those conditions. There has been no information presented other than general objections to Wal-Mart. Fortunately the ordinance is not set up on a popularity contest. Whether or not Wal-Mart is competitive or not is not one of the standards, what wages Wal-Mart has is not one of the standards, and what Wal-Mart plans to do with it's store when it moves is not one of its standards. The key issue raised that deal with the standards is traffic. Wal-Mart is not causing a public health and safety problem nor is Wal-Mart causing traffic congestion or a traffic hazard. These things may already exist, but they exist not necessarily along Gerber Road – Gerber Road will be better. It's not along Hendersonville Road – we will make Hendersonville Road better. It's not Sweeten Creek Road in terms of the intersection of Sweeten Creek Road and Gerber Road – we are making that better as well. All discussion about traffic hazard has dealt with Mills Gap Road which is 1/4 of a mile away. The only reason Wal-Mart looked at Mills Gap Road was because the City's Traffic Engineer asked that it be looked at. City staff identified what increase in traffic Wal-Mart would have on Mills Gap Road and they quantified their impact. Wal-Mart was then assessed a condition to deal with that impact and that condition was to contribute money. The key part is Mills Gap Road has been a problem since at least 1989. Just because Wal-Mart will add 7% additional traffic on Mills Gap Road doesn't mean they have to re-build Mills Gap Road. City Council can say what impact Wal-Mart will have and hold them responsible for that impact, but not for the existing conditions. It would be critical if there was no other access to this property and all the roads around it were inadequate, but that is not the testimony. Hendersonville Road and Sweeten Creek Road are adequate, with the conditions imposed upon Wal-Mart. The only road that may not be adequate, when Wal-Mart is built out, is Mills Gap Road. And what Council has required of Wal-Mart is not to go in there and re-build Mills Gap Road for the City, but to contribute to the improvement of Mills Gap Road.

Mr. Justus said that in terms of stormwater, the point of the stormwater is there is a condition imposed on Wal-Mart that they will develop their stormwater management to pre-development conditions. Wal-Mart is doing ten times more than what the City's ordinance requires. Wal-Mart has done much more in many different areas, e.g. buffers, bicycle racks, decorative street lighting, etc. Again, City staff has said Wal-Mart has met the conditions of the ordinance and there is not one expert that says they are causing a problem out there and to the extent that there is a traffic impact, they are going to mitigate that. If a continuance had been granted, they were willing to even go beyond their impact on Mills Gap Road and try to address other ways to alleviate Mills Gap Road even though they did not cause the problem. Wal-Mart is willing to abide by all reasonable conditions that this City Council would impose upon them. Wal-Mart has not turned down one thing City staff has asked of them and they have worked with them long and hard and have agreed with everything City staff has said. To deny this project because of Mills Gap Road, an existing condition 1/4 mile away, is not fair and not the rule of law in the State of North Carolina.

Mr. Siemens said that the first priority in the Sustainable Economic Development Strategic Plan is the real estate priority - addressing the shortage of industrial sites and buildings, developing a more efficient and sustainable urban land use pattern within the City. One quarter of the Plan is devoted to that priority. That is a criteria under the conditional use analysis. Does this proposed development fit the plans that this City Council has adopted. The answer is no. The development also does not fall under the Smart Growth policies. He conceded that policies are not the same things as plans, but the Smart Growth policies dovetails very neatly with the Economic Development Plan. In addition, no one has done a study on how stormwater affects Crowfields.

Mr. Gregory said that regarding the traffic issue, Mr. Justus is making a point that we should make Wal-Mart accountable for what Wal-Mart's contribution is and the evidence from the applicant is a 7% volume increase. Evidence has been presented that the traffic impact is not narrowly confined to the site – it spreads out to a farther area, such as to Mills Gap Road. There was even a measurable impact from Wal-Mart that could be measured in terms of delay at the Long Shoals Road intersection. The impact is not just from the increase in traffic, but the extra delay. The impact is greater than the 7% and the conditions they are being asked do not address the actual impact. Also those conditions are completely speculative if they are ever going to be met – the closed loop system is at the application phase and it's for a higher amount of money than is typically granted for those kind of things; and Mills Gap Road is not going to be on the TIP. The N.C. Court of Appeals, dealing with these traffic issues, has said city councils can deny these permits when this type of evidence is before them. It is substantial, competent evidence and in spite of the fact there may be improvements down the road, it's just too much to ask to hope for all these conditions to be met.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 12:20 a.m.

Vice-Mayor Cloninger moved to deny the conditional use permit for the construction of a Wal-Mart Supercenter at the intersection of Gerber Road and Hendersonville Road. This motion was seconded by Councilman Peterson.

Vice-Mayor Cloninger said he could not find that the proposed use is reasonably necessary to the public health, safety and welfare. There is nothing necessary about this proposed Wal-Mart. There are already two Wal-Marts, two Lowes, two Home Depots, two K-Marts, and a multiple other businesses that provide the same products and services this proposed Wal-Mart offers. He does not feel that the project fits in with the harmony of the neighborhood. It does not conform with the Sustainable Economic Development Strategic Plan adopted by the City in that this is one of the last sites within the City appropriate for industrial uses. He cannot find that the proposed use will not cause undue traffic congestion or cause a traffic hazard. He does not take much comfort in the fact that the NC DOT will improve Sweeten Creek Road seven or eight years in the future. He felt Council should consider issuance of the permit on the current conditions.

Councilman Peterson agreed pretty much with Vice-Mayor Cloninger. He reviewed the expert evidence that was offered in that delays increase rapidly at high volumes. Since we are already at high volumes, adding over 4,000 new trips with the additional changes that are coming to Sweeten Creek and the vicinity of the railroad tracks, he felt there was a potential to endanger public safety. He also felt this project would cause undue traffic congestion and create a traffic hazard.

Councilwoman Bellamy said that there have been many things stated that are not pertinent to the decision before Council. Regardless of how we feel personally about Wal-Mart's business practices or how they run their management, we must focus on the seven conditional use standards outlined in the UDO. Based on the information tonight that focus solely on those standards, she felt a holistic look at the traffic impact was not taken into account. According to the staff report submitted by staff (City Exhibit 4), the TIA submitted by Wal-Mart limited their study to traffic around the project. Additionally, the percentage used to estimate the growth factor of added traffic may be too insignificant in this high growth area. Therefore, she will vote against the project based on these facts. She is comfortable with the fact that Wal-Mart does not fully meet the standards numbers one and seven.

Councilman Worley agreed that there were a number of things City Council cannot consider, i.e., wages, and the effect a Wal-Mart will have on other businesses. City Council must base their decision on the seven conditions for conditional use standards. When he looks at those conditions, the primary standard that has been the subject of most consideration is traffic. There is no question that the traffic on Hendersonville Road, Mills Gap Road and Sweeten Creek Road is difficult at times. Condition No. 7 is, will the proposed use cause undue traffic congestion or create a traffic hazard. When you listen to the expert testimony provided, particularly the testimony of the traffic engineer representing the residents in opposition to the Wal-Mart, and the TIA, he explained why he felt Wal-Mart will not increase undue traffic congestion or create a traffic hazard. With regard to stormwater, the stormwater management actually improves stormwater runoff to the pre-development stage and is based upon a 100 year storm, rather than our ordinance mandated 10 year storm. He felt this project did fit with the City's Smart Growth policies. He said if we don't follow our Smart Growth policies, we will gradually increase the burden on our City taxpayers.

Councilwoman Field said that she is a retailer and employs all women, part-time at their request. She felt defeated in that the community was trying to make it look like Wal-Mart would put all small businesses out of business, and she is a small business owner. In the last nine years she has been on City Council she has done her best to respect the zoning process. If the area is properly zoned and the project meets our standards, City Council should give them the opportunity to build what they want to build. As an architect, she believes that anything can be made beautiful and any kind of activity can be located adjacent to any other kind of activity. She felt sorry for parts of our community that need a job or would like to move up in the world because this community did not want a Wal-Mart Supercenter.

Councilman Hay said that in the last six months City Council has had an opportunity to put requirements/conditions on developers making them do things the City could never make them do before. The projects moved forward and were much better than they started. He felt the conditional use process is a terrific tool for implementing our Smart Growth policies and our economic development goals. He was in favor of a continuance because he was curious about what Wal-Mart would come up with regarding improvements on Mills Gap Road. After he listened to all the comments, he could not find the proposed use will not cause undue traffic congestion.

Mayor Sitnick said that Condition Nos. 1, 2 and 7 have not been met. She cited health and safety concerns, especially regarding emergency vehicles. There are a number of issues relating to traffic. She felt it was important to understand what Councilwoman Field said about following and respecting the zoning rules. However, she felt it is Council's charge to protect the people of the community and she doesn't think that was done. She didn't think the fixing of Mills Gap Road was sufficient. The existing conditions are terrible. When you review the TIA and when you hear Mr. Justus' justification for the fact that they didn't cause the problem, well, that's true. But we should do everything we can to protect people from exposure to unhealthy conditions, even if it's dangerous traffic conditions. The fact that City staff recommended certain traffic improvements that were contingent upon the NC DOT having the resources to improve conditions was totally and completely inconsistent with the recommendation to approve this project. She questioned how a project can be approved, but in order for it to be safe, things have to happen, when you know things may not happen anytime soon. With 21% growth projected, this one project was going to be responsible for 1/3 of it. That shuts out smart growth, economic development and any plans for knowledge based industries, and in her opinion, small business – which accounts for 85% of the employment in this country.

The motion made by Vice-Mayor Cloninger and seconded by Councilman Peterson to deny the conditional use permit to construct a Wal-Mart Supercenter at the intersection of Gerber Road and Hendersonville Road carried on a 6-1 vote, with Councilman Worley voting "no".

City Attorney Oast said that he would bring back the order denying the conditional use permit at Council's next formal meeting on November 28, 2000.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of October 20-27, 2000: Carla Clayton (Water), Kathleen Lasher (Police) and Michael Lurey (Water).

The following claims were received by the City during the period of October 28-November 2, 2000: Terry Fisher (Water), Leslie Patton (Water), Penne P. Rosenthal (Parks and Recreation), Stuart Mills (Water) and Nancy Rice (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

B. LAWSUITS

The City has filed a complaint on October 9, 2000, which is generally described as follows: City v. Jordan Nicole Mathis, a minor, by and through her Guardian Ad Litem, Virginia W. Cartner; and Paul Blankenship. The purpose of the lawsuit is to condemn an easement for a water line project. This will be handled by an outside attorney.

The City has received a complaint on November 3, 2000, which is generally described as follows: Johnnie E. Harper v. City of Asheville. The nature of the proceeding is a petition for de novo trial to reinstate his position of employment with the City of Asheville. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 12:50 a.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

27

Tuesday - November 21, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Waiver of Parking Fee for Buncombe County Board of Elections

Summary: The consideration of a resolution for a fee reduction/waiver for the use of metered parking spaces by Buncombe County Board of Elections.

At the request of the Board of Elections, City staff set aside 11 metered spaces adjacent to the Board of Elections office on College Street for use by voters in connection with the No Excuse – One Stop Voting Program authorized by recently enacted law. The City's Fees & Charges Manual indicates a normal cost of using a parking meter space for an entire day is $10.00 per space. However, the Fees & Charges Manual also provides City Council the option to establish, by resolution, a cost for using a parking meter space for an entire day in association with a "Limited Event for Motor Vehicles."

The Buncombe County Board of Elections requested that the City waive the fees in connection with its use of the parking spaces for the program. The program, and therefore the use of the metered spaces, ended on November 8, 2000. The No Excuse – One Stop Voting Program qualifies as a Limited Event for Motor Vehicles for which special fees could be set by resolution. The Board of Elections has requested that the fees be waived entirely, but a waiver is not clearly permitted in the Fees and Charges Manual. However, there is no minimum fee prescribed and City Council may set the fee at $0.00 for the Limited Event.

If it is Council's desire to set a special fee of $0.00 for this Limited Event, City staff recommends adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CIVIC CENTER COMMISSION ORDINANCE REVISIONS

City Manager Westbrook said that this is the consideration of a draft Civic Center Commission ordinance amendment that has been prepared as directed by City Council and is ready for Council's approval.

On November 3, 1999, Council directed staff to work with the Civic Center Commission to update the Civic Center Commission ordinance and bring it in line with other appointed Boards and Commissions throughout the City.

Since that initial charge from City Council, City Attorney Bob Oast, Civic Center Director David Pisha and City Manager Jim Westbrook have been working with the Civic Center Commission Chair Dr. Carl Mumpower to restructure the ordinance. The more prominent parts of the ordinance are as follows:

28

A. The Commission is created by City Council, and members are appointed by Council for terms of three years. The Chair of the Commission is appointed by City Council.

B. The duties of the Commission are to review and make recommendations on programming goals and objectives, to establish a procedure for handling customer service complaints, to establish committees as needed, develop and make recommendations to the Civic Center Director and City Manager regarding long-range plans of the Civic Center, to review and make recommendations on administrative policies and fees and charges, to accept gifts on behalf of the Civic Center, and to encourage the promotion of sports, recreation, entertainment and other cultural events and activities that might use services or facilities of the Civic Center.

C. The Commission would annually provide goals and objectives to the Civic Center Director for consideration in his preparation of the annual budget.

The Civic Center Commission met and it is my understanding that they are opposed to the City Council's appointing the Chair of the Commission. The reason staff recommends that the Chair of the Commission be appointed by Council is that this is a very important Commission and one in which the Council expects much work to be done as the City seeks to determine the future of the Civic Center. It is the opinion of staff that when the Chair is selected by the Council, as opposed to the Commission itself, the Chair has the full backing of the Council to move the Commission forward in concert with the goals and objectives of Council.

City Manager Westbrook thanked Dr. Mumpower and members of the Civic Center Commission for their diligence in working with the City to prepare the new ordinance.

City staff recommends that Council adopt the ordinance amending the ordinance establishing the Civic Center Commission.

Councilman Hay, liaison to the Civic Center Commission, relayed how the current ordinance was not consistent with practice or state law.

Dr. R. Carl Mumpower, Chair of the Civic Center Commission, spoke in support of the proposed ordinance and feels like it gives the Commission a meaningful role and they can be helpful and useful to City Council. The only issue the Commission would like to see changed is that the chair be appointed by the Commission members themselves – not City Council. The Commission feels that City Council goes through a lot of trouble and interviews to appoint the 11 Commission members and those members should have the insight and awareness to elect their own chair. Secondly, a personal concern is that a chair is sometimes required to be a bit outspoken and he doesn't think that person would be comfortable in doing that if they felt their tenure lies more with City Council and with the entire Commission.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook explained the chain of command at the Civic Center and with the Civic Center Commission with regard to administration, goals and objections, and the budget. He noted that the Civic Center is the direct responsibility of the Civic Center Director and the City Manager, who are directly accountable to the City Council.

City Council discussed what other boards City Council appoints a chair to and why.

Upon inquiry of Councilwoman Bellamy, Dr. Mumpower explained that the Commission has no desire to control the operation of the Civic Center. It only has an interest in an

29

opportunity to vote their prospective, to keep an eye on the Civic Center, and offer to City Council informed suggestions.

Mayor Sitnick explained that she feels a sense of responsibility and accountability for whatever happens at the Civic Center due to the huge portion of taxpayers money used on the Civic Center. Therefore, she felt that City Council should appoint the chair. She stressed that there should be open lines of commission because this is a very important Commission.

Vice-Mayor Cloninger could see why the Commission or any board might want to appoint their own chair because certain leaders naturally emerge and those Commission members can see who would be the best chair. Also, he can see City Council wanting to be consistent in appointing a Chair as they do on other commissions. He suggested that if City Council does make an annual appointment of a chair, then prior to doing that each year that Council receive a recommendation(s) from the Commission itself and City Council should give heavy consideration to that recommendation.

Upon inquiry of Councilwoman Field, City Attorney Oast said that it is the intent of the ordinance that the chair be appointed from the membership of the Commission.

Councilman Worley explained why he felt the Commission should appoint their own chair, noting that it would be disastrous for Council to appoint a chair who didn't have the support of the entire Commission.

Councilman Hay noted that the Civic Center Chairman position is a higher profile position than most and that person plays a special role. Because the media contacts the chair directly, it is important that the chair represents the interest of the City and the Commission and it needs to be someone City Council has confidence in. He felt if City Council appoints the chair, they will know that that person represents the points of view City Council wants to be included.

With a show of hands to give direction, it was the consensus of City Council to allow the Commission members appoint a chair within their membership.

City Council instructed the City Attorney to prepare two different ordinances (1) to have City Council appoint the Chair, including language that each year the Commission send their recommendation for a chair to City Council and that City Council give heavy consideration to the Commission's recommendation; and (2) that the Commission appoints the chair from amongst it's membership.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

UDO AMENDMENT REVIEWS

City Attorney Oast said that these Unified Development Ordinance amendments are being brought before City Council in order that staff may respond to questions Council may have prior to the public hearings, which are scheduled on December 19, 2000. He advised Council that it would be inappropriate for Council to receive comments from the public at this worksession.

Height of Fences

Urban Planner Dan Baechtold said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the permitted height for fences.

30

The proposed ordinance amendment would revise the maximum height permitted for fences located in the side and rear setbacks. Currently, fences are limited to a maximum height of six (6) feet if they are located in the front, side, or rear setbacks. Given the topography of the City, this height is often not adequate to screen adjacent uses and/or to provide privacy to homeowners. The Board of Adjustment has received several requests for variances from the fence height standard and the Planning and Development staff has received requests for the ordinance amendment being proposed. A maximum height of eight (8) feet for fences located in the side and rear setbacks is established by the draft ordinance amendment, with the maximum height remaining at six (6) feet for fences located in the front setback. In addition, the proposed ordinance would prohibit the blocking of the sight visibility triangle, located at street intersections, by fences. The proposed ordinance amendment would address the issues raised by the variance requests and would meet the needs of those requesting the ordinance amendment.

At their October 4, 2000, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the maximum height for fences. The Planning and Development staff recommends approval of the wording amendment.

Revisions to the Standards for On-Premise Signs

Development Code Enforcement Administrator Mike Wheeler said that this is the consideration of an amend to the Unified Development Ordinance (UDO) to revise the standards for on-premises signs.

The proposed ordinance amendment would revise the City's sign ordinance to make it easier for staff and the public to use. The proposed amendment represents the first comprehensive revisions to the sign regulations since their adoption over ten years ago. The proposed amendment would revise the standards for on-premises signs only; the standards for off-premises signs would remain unchanged. Revised standards for single tenant and multi-tenant signage are proposed, as well as changes to some miscellaneous standards. The proposed changes include:

Single tenant signage

- Reformat the section in the same style as the multi-tenant signage regulations;
- Permit suspended/transom signs;
- Permit maximum square footage for attached signage to be distributed between 2 signs;
- If variance granted by Board of Adjustment to permit sign larger than 125 sq ft, setback would be 15 ft instead of 10 ft;
- Commercial subdivisions permitted identification sign like residential subdivisions.

Multi-tenant signage

- Eliminated the standard that based attached tenant signage on the type of freestanding sign; tenants now permitted one square feet of attached signage for each one linear foot of building frontage (with max size identified);
- Increased maximum square footage from 187.5 to 200;
- Setback based on sign size. Signs over 125 square feet have 15 feet setback; signs under 125 square feet have 10 feet setback;
- Businesses sharing an entrance can have wall signs;
- Subtenants within a leased area can each have a small wall sign.

Miscellaneous

- Method of calculating sign size simplified;
- Flags of nations, states, etc. are exempt; other flags added to list of prohibited signs;
- Modified section dealing with signs on vehicles to make it easier to enforce;
- Altered section dealing with directional signage; and
- Added signage to the list of design elements an authorized design board can vary.

The input and ideas of sign contractors and businesses was used in the development of the proposed revisions. The adoption of the proposed ordinance amendment will improve the ability of the staff to administer the sign regulations while providing additional flexibility to business owners in advertising their businesses.

At their October 4, 2000, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the standards for signs. The Planning and Development staff recommends approval of the wording amendment.

Mr. Wheeler responded to questions from Council regarding the proposed ordinance.

Mayor Sitnick asked City staff to think about some way, while addressing the businesses need to be seen, to make sure that if a variance is granted for a sign that the sign is accomplishing what the businesses want to accomplish. Mr. Wheeler said that City staff does make recommendations but it is ultimately up to the Board of Adjustment to decide on whether to grant the sign variance or not.

Discussion surrounded political signs and suggested amendments to the sign ordinance.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to proceed with the appropriate public hearings on December 19, 2000.

WATER RESOURCES DEPARTMENT ANNUAL REPORT

Water Resources Director Tom Frederick said that the Fiscal Year 1999/2000 Annual Report for the Regional Water Authority of Asheville, Buncombe and Henderson is being presented to the Asheville City Council and Buncombe County Commissioners as required by the Water Agreement.

The Water Agreement states that the Regional Water Authority shall make semi-annual reports to the City and the County. Each year, staff provides a brief semi-annual update of Authority accomplishments in approximately February and a more detailed annual report in approximately October.

Last year, the annual report was titled A Year of Extremes and featured the drought and our new water source. This year, the Authority's Annual Report is titled Treating Our Water With Extraordinary Care – A Perfect Blend of Nature and Science. It highlights the Authority's new Mills River Water Treatment Plant which was dedicated in November 1999 and compares it to the North Fork and William DeBruhl (Bee Tree) Water Treatment Plants. The Mills River source and treatment process are very different from North Fork and Bee Tree; but regardless of the source of water or treatment facility processing the water, our customers can be sure that the product delivered to their homes and businesses is of exceptional quality.

The Fiscal Year 1999/2000 Annual Report also summarizes the Water Distribution Master Plan Improvements, Critical Needs Grant Projects, Mills River Watershed Protection Project, routine system maintenance, the education and efficiency program, and the annual operating budget.

Mr. Frederick answered several questions from City Council regarding the Water Resources Department.

City Manager Westbrook suggested City Council authorize the Mayor to send a letter to the Regional Water Authority to remind them of the City's smart growth policies.

No action by the City Council is required, this report reviews Water Resources Department and Regional Water Authority accomplishments during the Fiscal Year 1999/2000 as required by the Water Agreement.

AMENDMENT TO FISCAL YEAR 2000 AND PRIOR YEARS COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ALLOCATIONS

Councilwoman Bellamy asked to be excused from this matter since Mountain Housing Opportunity (her employer) is a sub-recipient on some of the funds. Councilman Worley moved to excuse Councilwoman Bellamy from participating in this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of amendments to the allocation of CDBG and HOME funds in the City's Consolidated Action Plan for FY 2000 and prior years.

The City's Consolidated Action Plan, approved in May each year, allocates our annual entitlement of Community Development Block Grant (CDBG) and HOME funds to specific projects. The Plan covers a four-county area where the City administers HOME funds for the Asheville Regional Housing Consortium. From time to time, amendments are needed to deal with cancelled projects, cost over-runs, new urgent projects, or differences between actual and estimated program income.

At this time, staff recommends the following amendments:

1. **Cancellation of Thoms Life House Apartments project (FY 2000).** Thoms Hospital has withdrawn its application for $300,000 in HOME funding for a 20-unit transitional housing facility for people with spinal cord injuries because other funds necessary to the project were not committed in time. We expect that this project will be resubmitted for funding in 2001.

2. **Increase funding for Buncombe County Rural Rehabilitation program (FY 2000).** $100,000 in HOME funds is added to this program, operated by Mountain Housing Opportunity, to substantially rehabilitate approximately five owner-occupied houses in rural Buncombe County (locations to be determined). Buncombe County Commission has requested this re-allocation of funds originally committed to Thoms Life House.

3. **New HOME grant to WNC Housing, Inc (FY 2000).** A grant of $40,000 in HOME funds is recommended to fill a gap in development financing for a group home for 5-6 very low income people with hearing and/or vision loss, now under construction on Clearview Terrace in Asheville

4. **New HOME grant to Mountain Housing Opportunity for predevelopment expenses (FY 2000).** A loan of $23,000 to pay for the expenses of developing and submitting two projects for Low Income Housing Tax Credit financing in 2001. Costs include market studies, appraisals, and site option fees. Sites to be determined.

5. **Cancellation of Contractor Development Program (FY 1997).** In 1998 Neighborhood Housing Services started a program with $12,500 in CDBG funds to help construction workers become independent contractors. Two people were assisted with training, at a total cost of $2,007 dollars, but have decided not to proceed further. The remaining $10,493 is to be re-allocated.

6. **Increase funding for NHS Apartment Development (FY 1997).** $10,493 in CDBG funds is added to this program to meet cost over-runs on the development of 16 apartments currently under construction on three separate sites on Broad Street, and Montford Avenue in Asheville.

7. **Change of sub-recipient for World Changers Program (FY 1999).** $14,655 in CDBG funds is re-allocated from Neighborhood Housing Services to Mountain Housing Opportunity to provide program operation costs and materials for the repair of up to 30 homes by the World Changers youth volunteers in the summer of 2001.

Financial Summary of Proposed Amendments

Year	Project	Source	Original	Amended	Difference
1997	NHS Contractor Development	CDBG	12,500	2,007	(10,493)
1997	NHS Apartment Development	CDBG	0*	10,493	10,493

* This project was also allocated $100,000 in FY 1998

2000	Thoms Hospital Life House	HOME	300,000	0	(300,000)
2000	Buncombe County Rural Rehab	HOME	9,805	109,805	100,000
2000	WNC Housing Group Home	HOME	0	40,000	40,000
2000	MHO predevelopment costs	HOME	0	23,000	23,000
2000	Unallocated **	HOME	0	137,000	137,000

Notice of the public hearing was published on November 17, 2000, in the Asheville Citizen-Times.

City staff recommends approval of the amendments.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda for a public hearing.

SUMMER RECREATION PROGRAM

Mr. Butch Kisiah, Superintendent of Recreation, said that this is a presentation of the Parks and Recreation Department's first annual "Summer Activities Report Card."

The City of Asheville provides a variety of recreation activities and programs for its citizens and visitors. A "Summer Activities Report Card" has been developed by the Parks and Recreation Department to highlight these programs and to inform the public of these recreation opportunities. He then highlighted some of the summer programs.

No action is required, however, it is City staff's recommendation that City Council recommend these activities and programs to the citizens and visitors of Asheville.

Mayor Sitnick requested City staff send this report card to the US Nation Cities Weekly for some good press coverage.

Mayor Sitnick asked that this presentation be scheduled for an upcoming formal meeting so the public can see the wonderful activities and programs developed by the Parks and Recreation Department.

34

FILM BOARD VACANCIES

Vice-Mayor Cloninger said the terms of Cindy Pomeroy, Peter Loewer, Sarah Blankenship, Pam Turner, Jerry Birdwell, Bill Norwood, and Katherine Talbot, as members on the Asheville Film Board expired on November 1, 2000. In addition, Eric Scheffer, Barbara Pasternack and Anne Watkins have resigned their positions, thus leaving three unexpired terms until November 1, 2001.

Upon recommendation of the Asheville Film Board, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Cindy Pomeroy, Peter Loewer, Sarah Blankenship, Pam Turner, Jerry Birdwell and Bill Norwood to each serve a three year term, terms to expire November 1, 2003. All terms will be until their successors have been appointed.

Vice-Mayor Cloninger said that due to the unique nature of this board, he felt it would be appropriate to waive the requirement that the board applicants live within the City of Asheville. After discussion, it was determined that there were unique circumstances surrounding the recommendation of Robbie Williams and Guy Chancey (who are not City residents) and City Council directed the City Clerk to prepare the proper paperwork to appoint them, as well as Andrea Dray, to the Film Board.

In addition, City Council instructed the City Clerk to prepare the proper paperwork to (1) appoint Robbie Williams to serve a three year term, term to expire November 1, 2003; (2) appoint Guy Chancey to fill the unexpired term of Eric Scheffer, term to expire November 1, 2001; and (3) appoint Andrea Dray to fill the unexpired term of Anne Watkins, term to expire November 1, 2001.

With regard to the vacancy left by Barbara Pasternack and the recommendation by the Film Board to fill her unexpired term with Kathi Peterson (who is not a City resident), it was the consensus of City Council to ask the Film Board to either describe to City Council the expertise Ms. Peterson brings to the board or recommend another candidate who is a City resident.

PUBLIC ART BOARD VACANCY

Vice-Mayor Cloninger said that Judy Swan has resigned as a member of the Public Art Board, thus leaving an unexpired term until December 31, 2001.

Upon recommendation of the Public Art Board, City Council instructed the City Clerk to prepare the proper paperwork to appoint Betty Clark to fill the unexpired term of Ms. Swan.

MISCELLANEOUS ITEMS

Mayor Sitnick asked the City Council Boards and Commissions Committee to consider appointing an ex-officio member to the WNC Regional Air Quality Agency Board.

The City Clerk was instructed to send to City Council the process used for School Board appointments.

City Attorney Oast said that he needed more time to develop the Order denying the conditional use permit for the proposed Wal-Mart Supercenter at the intersection of Gerber Road and Hendersonville Road, due to out-of-town City business and the upcoming holiday. It was the consensus of City Council to note on the November 28, 2000, formal meeting agenda that this matter will be continued to Council's next formal meeting which is December 19, 2000.

35

CLOSED SESSION

At 6:05 p.m., Councilman Worley moved to go into closed session in order to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations. This motion was seconded by Councilwoman Field and carried unanimously.

At 6:55 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:55 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - November 28, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field (excused from the meeting at 9:26 p.m.); Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy (excused from meeting at 7:25 p.m.); and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilwoman Bellamy gave the invocation.

Mayor Sitnick introduced Buncombe County Commissioner Nathan Ramsey.

I. PROCLAMATIONS:

A. PRESENTATION OF KEY TO THE CITY TO RICHARD BOWMAN

Mayor Sitnick presented the Key to the City to Richard Bowman, recipient of the Distinguished Alumnus Award from the United Negro College Fund.

B. 2000 COMMUNITY POLICING AWARD PRESENTED BY INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE AND ITT INDUSTRIES

Representatives from ITT Industries, Co-Sponsor with the International Association of Chiefs of Police, presented Police Chief Will Annarino with the 2000 Community Policing Award.

C. RECOGNITION OF NORTH CAROLINA HOUSING FINANCE AGENCY AWARD RECIPIENTS

Community Development Director Charlotte Caplan said that in a time when it seems that affordable housing is hard to find and those individuals or families that need housing the most are lost in the system, the Asheville area can take pride in two local agencies that recently won awards for affordable housing. The Clearview Terrace Apartments Project, owned by WNC Housing, Inc. and AHOPE, a project of Hospitality House of Asheville, both won awards from the North Carolina Housing Finance Agency in the category of Special Needs Housing.

The Clearview Terrace Apartments project is a renovation of a building housing substandard apartments. The newly remodeled apartments are targeted for the severely and persistently mentally ill to foster independence and provide additional housing choices. Residents originate from adult care homes, group homes, living with supporting family, boarding homes and substandard housing. The Clearview Terrace Apartments house eight units: seven one-bedroom apartments and one efficiency apartment.

AHOPE, a project of Hospitality House of Asheville, provides a much-needed service for the homeless in Asheville. AHOPE consists of the day center, an outreach program and a Safe Haven for the homeless, mainly single persons with nowhere else to go. Up to ninety people are served each day. At night, AHOPE provides 6 beds for the most vulnerable. The center is staffed 24 hours a day. The City of Asheville provided $15,000 for this project, specifically for furnishings for the center.

Mayor Sitnick recognized board members from Clearview Terrace Apartments and also representatives from the Hospitality House and from the NC Housing Finance Agency.

D. PROCLAMATION PROCLAIMING OCTOBER 2000 AS "DOMESTIC VIOLENCE AWARENESS MONTH"

Mayor Sitnick read the proclamation proclaiming October 2000, as "Domestic Violence Awareness Month" in the City of Asheville. She presented the proclamation to Ms. Valerie Collins who briefed City Council on some activities that took place during the month.

E. RESOLUTION NO. 00-213 – RESOLUTION OF APPRECIATION TO S. DOUGLAS SPELL

Mayor Sitnick read the resolution of appreciation to S. Douglas Spell, Assistant City Manager, who will be leaving Asheville to accept the position of City Manager in Monroe, North Carolina, on December 4, 2000.

On behalf of the entire City Council, Mayor Sitnick wished to express its great appreciation to S. Douglas Spell for the meritorious service, loyalty and dedication he has rendered to this community.

RESOLUTION BOOK NO. 26 – PAGE 220

F. PRESENTATION OF CERTIFICATE OF ACHIEVEMENT FOR EXCELLENCE IN FINANCIAL REPORTING AWARD

Mayor Sitnick presented Finance Director Bill Schaefer with the Certificate of Achievement for Excellence in Financial Reporting Award. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management. The City of Asheville is proud to have received this award for the 20th year.

He also mentioned that Joseph D. Elkins, Account Senior, received the Award of Financial Reporting Achievement. Mr. Elkins was designated the individual primarily responsible for preparing the award-winning comprehensive annual financial report.

Ms. Patricia Leckey, Ms. Wynelle Hornsby, Ms. Leah Singleton, Ms. Lynn Ducker, Ms. Barbara Smith and Mr. Kevin Hymel were also recognized for their work in achieving the awards.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 14, 2000, AND THE WORKSESSION HELD ON NOVEMBER 21, 2000

B. RESOLUTION NO. 00-214 - RESOLUTION FOR A FEE REDUCTION/WAIVER FOR THE BUNCOMBE COUNTY BOARD OF ELECTIONS "NO EXCUSE – ONE STOP VOTING PROGRAM"

Summary: The consideration of a resolution for a fee reduction/waiver for the use of metered parking spaces by Buncombe County Board of Elections.

At the request of the Board of Elections, City staff set aside 11 metered spaces adjacent to the Board of Elections office on College Street for use by voters in connection with the No Excuse – One Stop Voting Program authorized by recently enacted law. The City's Fees & Charges Manual indicates a normal cost of using a parking meter space for an entire day is $10.00 per space. However, the Fees & Charges Manual also provides City Council the option to establish, by resolution, a cost for using a parking meter space for an entire day in association with a "Limited Event for Motor Vehicles."

The Buncombe County Board of Elections requested that the City waive the fees in connection with its use of the parking spaces for the program. The program, and therefore the use of the metered spaces, ended on November 8, 2000. The No Excuse – One Stop Voting Program qualifies as a Limited Event for Motor Vehicles for which special fees could be set by resolution. The Board of Elections has requested that the fees be waived entirely, but a waiver is not clearly permitted in the Fees and Charges Manual. However, there is no minimum fee prescribed and City Council may set the fee at $0.00 for the Limited Event.

If it is Council's desire to set a special fee of $0.00 for this Limited Event, City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 221

C. MOTION SETTING A PUBLIC HEARING ON DECEMBER 19, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PERMITTED HEIGHT FOR FENCES

D. MOTION SETTING A PUBLIC HEARING ON DECEMBER 19, 2000, TO AMEND THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS FOR ON-PREMISE SIGNS

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution on the Consent Agenda and it would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

CHANGE IN AGENDA

Vice-Mayor Cloninger moved to amend the agenda to hear at this time the presentation regarding the Asheville Honors Program. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ASHEVILLE HONORS PROGRAM

Former Mayor Eugene Ochsenreiter explained a program that would recognize individuals and institutions in the City who over the years have played a prominent role in the City's growth and development.

There have been many individuals and institutions over the years who have assisted in the development and growth of Asheville. Individuals and institutions who have provided leadership in development, the arts, culture, the business world and in other ways have helped establish Asheville as a unique city in which to live, work and recreate. The purpose of the awards would be on an annual basis to select an individual(s) or institution(s) to be honored by the City for their contributions and to hold an appropriate awards ceremony to confer the awards.

City staff has met with Mayor Sitnick, City Manager Westbrook, Ms. Sara Bissette and Ms. Harriette Winner to discuss how such a program might work at the conceptual level. The group recommended that the awards be selected by an independent committee and presented on behalf of the City of Asheville by the Mayor and City Council at the appropriate time.

City staff feels this is a worthwhile endeavor and would provide an additional avenue to recognize individuals and organizations who are so important to the community. On November 14, 2000, City Council stated that they would like to pursue an Asheville Honors type of program, and authorized the following steps: (1) Approved a mission statement for the committee; (2) Approved operating principles to guide the committee; and (3) Approved a modest budget ($4,000) for the committee to begin their work and initially promote the program. City Council will appoint a chair and ask the chair to appoint members to the committee subject to Council approval.

On behalf of City Council, Mayor Sitnick thanked Mayor Ochsenreiter, Ms. Bissette, Ms. Winner, and City staff for working on this program.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ADOPTION OF AN ORDINANCE DIRECTING THAT THE DWELLING LOCATED AT 135 MERRIMON AVENUE BE VACATED AND CLOSED

ORDINANCE NO. 2770 - ORDINANCE DIRECTING THAT THE DWELLING LOCATED AT 135 MERRIMON AVENUE BE VACATED AND CLOSED

Mayor Sitnick opened the public hearing at 5:50 p.m.

Mr. Jeff Baker, Housing Code Coordinator, said that 135 Merrimon Avenue is an older house across the street from DEAL Pontiac/Buick. There is a smaller cottage at the rear of the property. For the last 8 years 135 Merrimon has been a boarding house for low-income residents, offering shelter for folks that might otherwise be homeless and people trying to re-establish themselves from alcohol or drug abuse. The owner (Robert Janney and wife, Sara B. Krueger) provided a meal service and kept the rents low. This was an individual effort in that the owner had no alliances with non-profits providing similar services. The main house has 30 units and the rear house has 5 units. There are presently 33 tenants in the structure.

The following is an overview of some general information regarding this property: (1) Fair market value of dwelling is $456,900; and (2) Estimated cost to repair and bring into Code compliance is $179,000.

The facility is in disrepair. In January 2000 our inspectors found serious, life threatening violations of State and local ordinances. The owner responded to the life threatening violations by installing emergency lighting, door hardware, fire alarms, repairing the electrical system to the standards of the Housing Code and removing tenants from the third floor.

Other serious violations involved structural repair in the basement, egress requirements for the first floor, second floor and stairwell as well as numerous maintenance items having to do with windows, doors, gutters and failing paint. In March the Housing Office requested, but did not receive, an engineer's assessment and plans for bringing the building into conformance. The Housing Office then held a hearing and ordered that the building be repaired. Due to the significant amount of work involved, it was specified that at least 50% of those repairs be finished by August 1, 2000, 60 days from the date of the Order. Additionally the Order specified that should the owner fail to meet the terms of the Order that he must "vacate and remove all tenants from the dwelling structure without unnecessary delay, leaving the dwelling structure completely vacant and void of any and all occupants." As of August 1, 2000, and as of this date, no repairs to the critical areas of egress have been made, no engineer's report has been submitted and the owner had made no attempts to vacate the building. However, un-permitted work has been done to the structure of the building, which is of poor quality. Maintenance issues such as paint, rotten soffits, gutter repair work and window repair work have not been done.

The owner has maintained that he has no funds to make the necessary corrections in the buildings, he applied for and was denied a loan from the Housing Rehabilitation Office. As of today, the property at 135 Merrimon has been foreclosed upon. The new owners as of November 8, 2000, TM Equity Inc., (mortgage company) indicate that they have no interest in continuing the operation. To that end they indicated that they will issue eviction notices to the residents.

Whether the present owners or the City takes the action of eviction, the pressure is enormous for the area non-profits to find housing for these displaced people. The Housing Authority has over 100 vacant apartments; housing case managers from the Affordable Housing Coalition have offered individualized relocation assistance to the tenants, and at least 2 workshops at 135 Merrimon have been held. It should be noted that this situation has refocused community attention on the plight of individuals who wish a more stable dwelling than a homeless shelter yet cannot afford an apartment. We can appreciate that the residents at 135 Merrimon enjoy their independence and their accommodations even though they are substandard. It is very difficult for them to find other housing. This is an important issue and one that needs more attention by the Asheville community, indeed it is an integral part of the task at hand; however, it is not the question before us tonight.

The aim of Asheville's Housing Code is to ensure that all housing, including affordable housing, meets the City's minimum standards. The fact that 135 Merrimon is non-compliant and needs to be vacated lies squarely on the shoulders of the previous owner Robert Janney and wife, Sara B. Krueger. It is that owner that has collected rental moneys through the years and now finds his property both substandard and in default. He has opted not to do the required maintenance over the years. He neglected to make the required effort to work with the Housing Office more intensively for the last 10 months. It is that owner who bears the ultimate responsibility for displacing these residents and vacating a building that can best be described as a firetrap. The talk of the town may be critical of this action on the part of the City of Asheville, however, if this building were to burn down with a significant loss of life, those same voices would be asking why the City had not taken action. It is the position of this department that until such time that 135 Merrimon is brought into compliance, the buildings should be vacated. We respectfully request the City Council to pass the Ordinance before it. The Ordinance asks that authority be granted to the Director to order the buildings vacated and closed until the necessary repairs are made and the buildings are compliant with the Housing Code. Should the current occupants fail to comply with the Order to vacate then by this Ordinance the Director may then file a Small Claims Action for Summary Ejectment.

As noted, the ownership of the buildings has been transferred and the present owners have indicated their intent to vacate the buildings. In other words it may not be necessary to exercise the authority granted tonight. Events could unfold, however, whereby it becomes necessary for the City to take this enforcement action. If this should happen we would use the authority only after alternative housing has been offered to the tenants. Section 2 of the Ordinance reads "The Director of Building Safety Department is hereby ordered and directed to vacate and close the dwelling; however, the Director is hereby given authority to withhold implementing the provisions of this Ordinance until suitable housing can be made available to accommodate all tenants now residing at 135 Merrimon Avenue, Provided, however, nothing herein shall prevent the Director from proceeding to implement the requirements of this Ordinance."

Finally, the Housing Office has proactively tried to avoid this type of enforcement action and requests this authority only as a last resort. He asked that City Council hear the perspective of the Affordable Housing Coalition and the Housing Authority with regard to 135 Merrimon as we have collaborated with them on this case.

Upon inquiry of Councilwoman Bellamy, Mr. Baker said that they talked to the owner about the possibility of lead-based paint and recommended he have the building tested for that.

When Councilman Worley asked for the specific violations that would be life threatening in nature, Mr. Baker said that the largest violations at this point is the fact that there are a total of four exits that do not comply with the State egress codes, including the central stairwell, which is basically a shaft. Those are the major problems, along with the structural problems in the basement – there is an 8x8 girder in the basement that is severely deteriorated that needs to be repaired.

Mayor Sitnick made it clear that the City's intent is not to put people out in the cold and the Housing Office has been working for quite some time with the Housing Authority and the Affordable Housing agencies to make sure that the people living there have a place to go. The responsibility here falls squarely on the owners who don't seem to think it's important to make a building safe.

Upon inquiry of Councilman Hay, Mr. Baker said that there is no representative from TM Equities Inc. at the meeting, nor are the prior property owners here.

Councilman Hay said that TM Equities Inc. is the mortgage company that foreclosed on the property. It is also his understanding that TM Equities Inc. is not going to make any repairs.

Mr. Baker said that TM Equities Inc. is trying to decide what to do with the property. It is clear to them that they do not want to run the operation as it is. Therefore, they have indicated to the City that they are interested in vacating the building. In the case that the building is not vacated, the City still needs to proceed along.

Mr. Baker said that they have been working with the Housing Authority and the Affordable Housing Coalition and they brainstormed any possible collaboration they could have, setting up some sort of non-profit to see if they could remedy the situation. However, the cost involved in making this particular building conform to the standards it has to, in order to hold that many people, are just prohibitive.

Councilwoman Field noted that if it were a different use, like a single-family residence it was designed as, or fewer than five tenants, the cost to bring the house up to Code would not be that significant.

Councilwoman Bellamy said that the housing non-profits are looking at what it would cost them to relocate each tenant and that cost is at least $3,500 up to about $8,000. Non-profits are looking at where would they get the money to just relocate the tenants, not including the cost it would take to bring the building up to Code.

Mayor Sitnick noted there are two separate issues here. One is to make a safe home for people to live in. The other is making sure that 33 people have a warm, safe place to live in the interim if the house is brought up to Code, or if not, permanently somewhere else.

Ms. Karen Keenan. Executive Director of the Affordable Housing Coalition, said that the Affordable Housing Coalition would like to reaffirm our support of the City of Asheville and staff in your on-going efforts to ensure that all Asheville citizens can access safe and healthy housing. With the support of the City's Community Development Block Grant Program, HOME Program, Rehabilitation Program and the new Housing Trust Fund, non-profit organizations and private developers are diligently striving to meet our community's affordable housing needs. Two of these non-profit organizations, WNC Housing and Hospitality House are being honored here this evening for their commitment to developing quality, safe, healthy and affordable housing.

It is ironic that on the day that we celebrate our successes, we are facing the immediate challenge of relocating 30-plus displaced residents. The greater frustration is that this situation was avoidable, if the property had received regular maintenance, if the Minimum Housing Code had been met or if corrective action had been taken by the property owner when the property was originally cited over 10 months ago, these 30-plus residents would not be looking for housing during the cold winter season. As City records reveal the Merrimon house property owner has been aware of the safety and minimum Code violations since January 2000. These violations are a page-and-a-half long and include: inadequate emergency egress, restrictive stairwells and hallways, and a structural system that is failing from a lack of maintenance. These residents are in danger everyday, and any one of these violations poses a real and serious threat to the health and safety of the residents.

These are mostly single adults, some with special needs, who are trying to retain their independence and dignity, and yes, most are working and living on a very limited income. As single adults, who are not elderly and don't have children, these residents generally go unnoticed in our community. Their housing requirements are minimal – a safe, dry room with heat, meals and a clean bathroom. This is not a lot to ask.

For many years, the residents of the Merrimon house have continued to pay rent and in return their only expectation was that the owner would uphold his end of the contractual agreement, by providing safe health shelter and a meal. As we are pointedly aware, this expectation has not been met, and as a result, we are all working to assist these persons in finding new residences. Even with the support of the Housing Authority, Hospitality House, Asheville Housing Coalition, and others, the influx of this many citizens to an already stressed market is proving to be more than the current market can bear. And as you are also aware, in Asheville this challenge is compounded by several factors: Asheville has an overall rental vacancy of less than 3%; single room residences are even more limited in availability; our community's supportive housing programs do not always match the resident's needs; and as stated earlier, the majority of these residents are on fixed income with little or no savings for the standard relocation expenses, such as moving vans, rental deposits or damage deposits.

In closing Ms. Keenan said that the Affordable Housing Coalition is in total support of the City's staff in performing the difficult and often times thankless job of enforcing the City's minimum health and safety codes; that we will continue to challenge, encourage and collaborate with the City to pursue the critical funding necessary to address our affordable housing crisis; and that we will strive to ensure that safe affordable housing continues to be available to all Asheville residents.

Ms. Keenan noted that the previous owner did receive funds from his tenants and did not maintain the structure for years. And, as a result, the Asheville community is now striving to find resolution to this for the victims, the residents of the house.

Upon inquiry of Councilwoman Field on what has been done to try to find residences, Ms. Keenan explained that Mr. Baker has coordinated a real task force team - not only of her staff, but with the Blue Ridge Center, with Hospitality House, Housing Authority, etc. They have had phone calls from the general public saying they have rooms available. They are taking all of that information and counseling staff is meeting one-on-one with the tenants to try to find individual residences for these people to relocate - some temporary and some permanent. They now have five counseling staff working on this one project. There has been one that has been successfully relocated. Some of the residents have found alternative housing themselves, but it is a process of matching up the need to the resource and then the extra challenge is the relocation costs. Again, they are working with private individuals in the community that have vacancies on their own properties. This has been an on-going effort. Some of what are generally considered potential options do not meet the requirements of these resident's needs.

Councilwoman Field noted that the Housing and Community Development Committee needs to work on some single room occupancy projects.

Upon inquiry of Councilman Hay, Mr. Baker said that he didn't think that TM Equities Inc. was collecting rent from the tenants. Councilman Hay stated that he was trying to generate some money to help with the relocation costs. He felt the present owner should take some responsibility for the relocation costs.

Councilman Hay asked Mr. Baker is he had any feel on how long it would be before suitable housing could be made to accommodate the tenants. Mr. Baker said that he believed there was enough emphasis on the Affordable Housing Coalition that they will offer places fairly quickly. He noted, however, that their challenge is more immediate than his challenge, as Housing Code Coordinator, because TM Equity Inc. will be vacating the building.

Upon inquiry of Councilman Worley, Mr. Baker said that they will not ask the tenants to put their suitcases on the sidewalk. However, he encouraged the tenants to do whatever they can to find another place to live, and they will do whatever they can to help them find a place to live.

Councilwoman Bellamy suggested that one or two tenants be on the task force to represent the great majority of the tenants who will be displaced. She also pointed out that there is $137,000 of unallocated Community Development Block Grant (CDBG) funds. She was not suggesting that the City put it all in relocation costs, but a representative from the Housing & Community Development Committee should attend the task force meeting and see what the City can do to help the situation.

Mr. Gene Bell, representing the Housing Authority of the City of Asheville, said they have obvious restrictions mandated by the Department of Housing & Urban Development as to who they can accept as residents in public housing. What they are entertaining now is potentially renting a group of units out to a non-profit and in that way, they would have the relationship with the non-profit and not with the individual (who may be excluded from applying due to a drug or some other criminal charge). They are currently working on that.

Councilwoman Field noted that another issue is that even if someone were to try to bring the building up to Code, it would require vacating the building in order to do it.

Mayor Sitnick asked if there was some legal avenue that could be pursued to attach the assets of the former owner in order to create the money necessary to quickly repair the building so that the residents could move back in. Assistant City Attorney Martha McGlohon said that there is nothing legally that the City can do against the previous owner. In fact, the former owner is in substantial debt and practically financially bankrupt.

A representative from Pisgah Legal Services said that the tenants have a legal avenue that they could seek rent abatement against the previous property owner for the time period they lived in the house. They can do that individually or as a class action. She said at this time they have only been approached by one resident who has taken an application with them and has been advised as to his legal rights in that matter. At least one other resident did take an application but did not meet their financial requirements.

Ms. Paula Simonton, current resident and representative of the tenants at 135 Merrimon Avenue, said that due to unforeseen circumstances the current residents of 135 Merrimon Avenue now know that they are in desperate life-threatening relocation straits. Because there is no affordable housing in Asheville for any of them at a monthly income of under $550, this decision of forced closure should be addressed by not only them, but the community of concern in Asheville. The displacement of 38 adults, mostly single, disabled either mentally or physically and those on fixed incomes, seems quite cruel. They realize there are agencies that are established to help place people like them, but at this date there are no available units. They have checked all avenues that they are aware of for a solution. According to the Affordable Housing Coalition, Blue Ridge Mental Health and the Department of Social Services, there are no units that they could move into in Asheville because there are none. They asked City Council if they had any other options or comments to help them.

Mr. Walter Gwinn, former general manager of the Merrimon House properties, said that he has a copy of the list of violations which indicate all the problem areas that have been completed that Mr. Baker failed to mention. If he did not do the work himself, he supervised the work being done. The majority of the violations have been completed, other than those we do need permits for, such as the alarm system – that has been corrected. We have a complete electronic fire alarm system. He has taken a fire safety training course and he has fire safety personnel who are trained to help evacuate the residents. He is also an Emergency Medical Technician and Ms. Simonton, who just spoke, is a Certified Nursing Assistant (CNA). We have two other CNA's that are also on staff. We have medical equipment there if someone gets injured. I have been affiliated with the Merrimon House properties for about 11 years and he knows what Mr. Janney has gone through these 11 years. He personally felt that Mr. Janney has one of the biggest hearts of anybody in the world. A lot of the financial problems he is in is because he didn't have the heart to evict people because they couldn't pay the rent. He presented City Council with a list of the violations, noting the ones that have been taken care of.

Mr. Walter Plowie, representative of the Carolina Real Estate Investors Association, said that having participated in the CDBG and HOME planning process for the last year and a half he has gained some insights. He suggested some CDBG or HOME funds be reallocated to this new need.

Mayor Sitnick closed the public hearing at 6:47 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2770, with the following amended Section 2 being inserted in the Ordinance: "The Director of Building Safety Department is hereby ordered and directed to vacate and close the dwelling; however, the Director is hereby given authority to withhold implementing the provisions of this Ordinance until suitable housing can be made available to accommodate all tenants now residing at 135 Merrimon Avenue, Provided, however, nothing herein shall prevent the Director from proceeding to implement the requirements of this Ordinance." This motion was seconded by Councilman Worley.

Councilman Worley said this was a difficult situation, however, in reality when you look at the Housing Code, we really don't have a choice. We have to enforce our Housing Code in situations that are truly life-threatening. It is apparent that the Housing Office has done everything possible to try to get this situation corrected before bringing it before City Council. He has even included in the ordinance provisions that allow the tenants to continue to remain there in one further effort to find suitable housing for them before this building is vacated. It may actually be moot, in that there is now a new owner for the property who has also indicated an intent to vacate the property. We may not have to actually enforce the ordinance ourselves. But he feels we are left with very little choice, given the seriousness of the violations and the life-threatening situation that exists there.

City Attorney Oast explained why he felt there should be a sunset provision included in Section 2 of the ordinance. He suggested some language be inserted in the ordinance such that if the property is not either vacated by the current owner or voluntarily by the tenants within a period of time, then the Building Safety Director is directed to vacate and close the structure, provided that he does not surrender his authority to vacate and close the structure within that time period.

Mr. Baker again encouraged the tenants to take much haste in moving out as they can and if City Council does include a sunset provision, he would suggest 90 days.

Upon inquiry of Councilman Hay, City Attorney Oast said that there are civil penalties associated with TM Equities Inc. presently allowing occupancy of a building that is in violation of the Housing Code.

City Attorney Oast then read a revised Section 2, as follows: "The Director of the Building Safety Department is hereby ordered and directed to vacate and close the dwelling, provided that the Building Safety Director may withhold from enforcement of this Ordinance for a period of 90 days to facilitate efforts to relocate current tenants and to enable the current owner to initiate appropriate legal action to vacate and close the structure for those tenants who do not relocate voluntarily. If, within that period, the structure is not vacated or appropriate legal proceedings have not been initiated to affect such vacating and closing the building, the Building Safety Director shall immediately initiate appropriate legal proceedings to vacate and close the structure. Provided however, that nothing herein shall prevent the Director from proceeding to implement the requirements of this Ordinance."

Councilman Hay did not want to relieve TM Equities Inc. of any legal responsibilities they have at this point in time. City Attorney Oast what we are essentially doing is creating a window to allow them to exercise their own legal remedies.

Councilman Worley was a little concerned about putting too much pressure on TM Equities Inc. in the sense that it might force them to vacate almost immediately without any window of opportunity for arrangements to be made to locate other alternative housing.

Vice-Mayor Cloninger moved to amend his motion to include the revised Section 2 as read by the City Attorney with the sunset provision language. Councilman Worley, who seconded the motion, agreed with the amendment.

Councilwoman Bellamy said that as a strong affordable housing advocate, this issue is very disheartening to her. When she visited the site she saw the amount of work to be done to bring the house at least up to livable standards. If the property had received regular maintenance, it would not be in the condition it is now. The Minimum Housing Code has been in effect for approximately five years and for the prior property owner to say he had only ten months to bring the house up to Code is not true. He should have been working on it for five years. He has given affordable housing a bad reputation and she stressed this is not typical affordable housing. She calculated that the prior property owner had collected over $31,000 in rent from the tenants for the past ten months.

Councilman Peterson agreed with Councilwoman Bellamy, noting that the building is a safety threat to the residents. He felt City Council has the duty to protect it's residents from this sort of danger. He feels like the previous property owner and potentially the current property owner are leaving it up to the City to do the dirty work because they are not willing to do something themselves about this. It's unfortunate.

Councilwoman Field noted that this is a private property owner and not a non-profit. This is the kind of project that gives a bad reputation to all the projects that are done well. The other thing we need to consider is the needs of this segment of our community for single room occupancy. She said that the Housing & Community Development Committee will be looking at some reallocation of HOME funds, but those funds have significant strings attached and cannot be used for this particular purpose. But, it is possible we can look towards some other places to help out. She asked Mr. Baker to give the Housing & Community Development Committee a report in December so they know how this is moving along.

The amended motion made by Vice-Mayor Cloninger and seconded by Councilman Worley carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 10

B. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PROCEDURE FOR THE REVIEW OF LEVEL III SITE PLAN REVIEW PROJECTS

ORDINANCE NO. 2771 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PROCEDURE FOR THE REVIEW OF LEVEL III SITE PLAN REVIEW PROJECTS

Mayor Sitnick opened the public hearing at 7:06 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the procedure for the review of Level III site plan review projects. This public hearing was advertised on November 17 and November 24, 2000.

Several months ago, City Council directed staff to pursue several concepts for streamlining the public hearing process for cases coming before Council. This proposed ordinance amendment was developed pursuant to that direction. The proposed ordinance amendment would revise the process for the review of Level III site plan review projects. These projects are residential projects of more than 50 units, commercial, office, and institutional projects of more than 100,000 square feet gross floor area, and industrial projects with a site area of more than 15 acres. The UDO identifies Level III site plan review projects as conditional uses, requiring the issuance of a conditional use permit by City Council. The current review process has two steps, the review of the site plan for technical compliance with City standards by the Technical Review Committee (TRC) and a public hearing, with final decision, by City Council. With this process, the first opportunity for public discussion and review of the proposed Level III projects is at the City Council meeting. Issues are often identified at the public hearing that take some time to resolve, resulting in lengthy public hearings. The technical approval of detailed site plans by TRC prior to the City Council public hearing results in the impression that the plans have already achieved a significant level of approval.

In revising the Level III site plan review process, the Planning and Development staff sought to achieve the following goals:

- Provide an additional opportunity for public input;
- Provide an opportunity for identification and resolution of issues and concerns prior to review of the site plans by City Council; and
- The revisions should result in no increased cost (time/money) for the applicants.

These goals were met by the revised the Level III site plan review process, which calls for:

- Review of the conceptual site plan by the TRC. The conceptual site plan will provide details on those issues of concern to decision-making bodies and the public but will not require detailed engineering or design, thus reducing the cost of plan preparation;
- Review of the conceptual site plan, with public hearing, by the Planning and Zoning Commission;
- Opportunity for resolution of issues/concerns identified at the public hearing before the Planning and Zoning Commission;
- Review of, and final decision on, the conceptual site by the City Council at a public hearing. If the conceptual site plan is approved, a conditional use permit would be issued by the City Council; and
- Review of detailed site plan by the TRC.

The revised Level III site plan review process identified in the ordinance amendment meets the goals established by the staff, resulting in an improved process that will better meet the needs of the community.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the review process for Level III site plan projects. The Planning and Development staff recommends approval of the wording amendment.

Councilman Hay asked if City Council could consider testimony, issues, comments and conversations from the Planning & Zoning Commission public hearing. City Attorney Oast replied "no" but the minutes of the hearing are public record and can be entered into the record at the City Council public hearing. He would not recommend City Council attending the Planning & Zoning Commission public hearing. He felt that City staff will do an adequate job of conveying the sense of the discussion of that meeting to City Council at their public hearing.

When Councilman Hay asked if some of the issues could be addressed at a worksession prior to the public hearing, as is done with UDO amendments, City Attorney Oast said that he would look into that process.

Councilman Hay asked where does the traffic impact study fit into the conceptual site plan process. Mr. Green said that the list of information required for the conceptual plan does not include the traffic impact analysis, however, it does include the catch-all of all other information determined by the Planning and Development Director as necessary to evaluate the request. That would provide City staff with the leeway to evaluate those projects on a case-by-case basis based on the projected traffic impact. He felt they would have enough information in the conceptual plan to determine early on if a traffic impact analysis would be required because he felt key factors in doing traffic impact analyses are the square footage of the proposed development and the type of development.

Mr. Max Haner, Chairman of the Planning & Zoning Commission, spoke in support of the proposed amendment.

At 7:25 p.m., Vice-Mayor Cloninger moved to excuse Councilwoman Bellamy from the meeting. This motion was seconded by Councilman Worley and carried unanimously.

Mr. Ned Guttman, speaking for the Redwood Forest homeowners, said that he agreed with the concept, however, they would like to see interested citizens getting involved in the process prior to the project going to the TRC. He suggested it be mandatory that a structured meeting with developers, Planning staff and interested citizens be included in the ordinance so that concerns can be addressed from the start. He also felt the public should be involved in the detailed plans because he felt that the TRC may not have the expertise, experience and knowledge of certain issues to make an informed judgment.

Upon inquiry of Councilman Peterson, Mr. Green read the information that will be required on the conceptual site plan.

Ms. Wanda Adams, resident of the Grove Park residential area, spoke in support of this proposed amendment and felt it would increase public participation.

Ms. Sharon Martin, resident of Montford, was concerned that the public would not have access to the detailed site plans, noting that the public may have some expertise that the TRC does not have.

Upon inquiry of Mr. Adam Balus, Mr. Green said that any standard for which a variance would be required would be identified on the conceptual plans and City staff would require that the variance be granted prior to bringing those plans to the City Council for final review.

Ms. Rebecca Campbell, east Asheville resident, felt there should be a broader range and more notice to area property owners and citizens when a zoning change is requested. In addition, she requested detailed site plans be made available to the public prior to the City Council public hearing and strongly encouraged a meeting with interested citizens and developers be mandated.

Mr. Green noted that the ordinance strongly encourages developers to meet with the neighborhood and the Planning and Development Department is working on ways to increase public notification.

Mr. Gerry Hardesty spoke in support of the proposed ordinance and requested the Planning & Zoning Commission meeting agendas be widely advertised.

Mr. Mike Moody, east Asheville resident, felt developers should provide as much information as possible up front so the Planning staff and the public has an opportunity to review as much of the project as possible.

Mr. Green stated that the TRC is composed of representatives from the Water Resources Department, the Metropolitan Sewerage District, the Engineering Department, the Fire Department, the Public Works Department and the Tree Commission. He stressed the role of the TRC is to review the plans for their compliance with the technical requirements of the ordinances and the technical requirements of any conditions City Council places on the particular project.

Mayor Sitnick closed the public hearing at 8:02 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2771. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 12

C. PUBLIC HEARING TO CONSIDER AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE SETBACKS FOR MULTI-FAMILY STRUCTURES

ORDINANCE NO. 2772 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE SETBACKS FOR MULTI-FAMILY STRUCTURES

Mayor Sitnick opened the public hearing at 8:03 p.m.

Chief Planner Gerald Green said that this is the consideration of an amend to the Unified Development Ordinance (UDO) to revise the setbacks for multi-family structures. This public hearing was advertised on November 17 and 24, 2000.

The proposed ordinance amendment would revise the setback requirement for multi-family structures. Currently, all multi-family structures must comply with increased setback requirements regardless of the adjacent land use. The setback is based upon the number of units in the multi-family structure or development. While this requirement for additional setback has buffered single family uses from large-scale multi-family developments, it also has resulted in the inefficient use of land, the physical separation of multi-family neighborhoods from each other, and the undesirable scattering of open spaces across development sites. The draft ordinance amendment eliminates the requirement for additional setbacks for multi-family structures when they are located adjacent to other multi-family structures or non-residential uses. When multi-family structures are located adjacent to single-family uses, additional side and rear setbacks of 2 feet for each unit more than one in the structure is required. Duplexes, triplexes, and quadraplexes are exempted from the requirement for additional setback when located adjacent to single family uses. This exemption is due to the small scale and minimal impact of these small multi-family structures. In addition, these small scale multi-family structures are conditional uses in single family districts, permitting a case-by-case review of design standards. The proposed ordinance amendment should result in the more efficient use of land, the more even distribution of open spaces, and elimination of physical barriers between multi-family neighborhoods.

The Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the setback requirements for multi-family structures. The Planning and Development staff recommends approval of the wording amendment.

Mayor Sitnick closed the public hearing at 8:05 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2772. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 18

50

D. PUBLIC HEARING TO AMEND FISCAL YEAR 2000 AND PRIOR YEARS COMMUNITY DEVELOPMENT BLOCK GRANT AND HOME ALLOCATIONS

RESOLUTION NO. 00-215 - RESOLUTION APPROVING AMENDMENTS TO THE CONSOLIDATED ACTION PLANS FOR THE HOME AND COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAMS

Mayor Sitnick closed the public hearing at 8:06 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of amendments to the allocation of CDBG and HOME funds in the City's Consolidated Action Plan for FY 2000 and prior years. This public hearing was advertised on November 17, 2000.

The City's Consolidated Action Plan, approved in May each year, allocates our annual entitlement of Community Development Block Grant (CDBG) and HOME funds to specific projects. The Plan covers a four-county area where the City administers HOME funds for the Asheville Regional Housing Consortium. From time to time, amendments are needed to deal with cancelled projects, cost over-runs, new urgent projects, or differences between actual and estimated program income.

At this time, staff recommends the following amendments:

1. **Cancellation of Thoms Life House Apartments project (FY 2000).** Thoms Hospital has withdrawn its application for $300,000 in HOME funding for a 20-unit transitional housing facility for people with spinal cord injuries because other funds necessary to the project were not committed in time. We expect that this project will be resubmitted for funding in 2001.

2. **Increase funding for Buncombe County Rural Rehabilitation program (FY 2000).** $100,000 in HOME funds is added to this program, operated by Mountain Housing Opportunity, to substantially rehabilitate approximately five owner-occupied houses in rural Buncombe County (locations to be determined). Buncombe County Commission has requested this re-allocation of funds originally committed to Thoms Life House.

3. **New HOME grant to WNC Housing, Inc (FY 2000).** A grant of $40,000 in HOME funds is recommended to fill a gap in development financing for a group home for 5-6 very low income people with hearing and/or vision loss, now under construction on Clearview Terrace in Asheville

4. **New HOME grant to Mountain Housing Opportunity for predevelopment expenses (FY 2000).** A loan of $23,000 to pay for the expenses of developing and submitting two projects for Low Income Housing Tax Credit financing in 2001. Costs include market studies, appraisals, and site option fees. Sites to be determined.

5. **Cancellation of Contractor Development Program (FY 1997).** In 1998 Neighborhood Housing Services started a program with $12,500 in CDBG funds to help construction workers become independent contractors. Two people were assisted with training, at a total cost of $2,007 dollars, but have decided not to proceed further. The remaining $10,493 is to be re-allocated.

51

6. **Increase funding for NHS Apartment Development (FY 1997).** $10,493 in CDBG funds is added to this program to meet cost over-runs on the development of 16 apartments currently under construction on three separate sites on Broad Street and Montford Avenue in Asheville.

7. **Change of sub-recipient for World Changers Program (FY 1999).** Cancel the Neighborhood Housing Services World Changers Repair Program ($14,655 in CDBG funds) and re-allocate those funds to the Neighborhood Housing Services Apartment Development Program.

Financial Summary of Proposed Amendments

Year	Project	Source	Original	Amended	Difference
1997	NHS Contractor Development	CDBG	12,500	2,007	(10,493)
1997	NHS Apartment Development	CDBG	0*	10,493	10,493

* This project was also allocated $100,000 in FY 1998

2000	Thoms Hospital Life House	HOME	300,000	0	(300,000)
2000	Buncombe County Rural Rehab	HOME	9,805	109,805	100,000
2000	WNC Housing Group Home	HOME	0	40,000	40,000
2000	MHO predevelopment costs	HOME	0	23,000	23,000
2000	Unallocated **	HOME	0	137,000	137,000

City staff recommends approval of the amendments.

Upon inquiry of Councilman Hay about using some of these funds to help with the relocation of tenants at 135 Merrimon Avenue, Ms. Caplan said the City cannot use HOME funds for that purpose. She said that an allocation of CDBG funds might be possible. She said they had in mind to do something along those lines when we have the proceeds from the sale of the Biltmore Avenue properties. Until those properties have been sold, she cannot recommend making fresh CDBG allocations because we don't really know exactly how much we are going to sell those properties for and we have already committed the funds from that sale to other agencies.

Mayor Sitnick closed the public hearing at 8:13 p.m.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 00-215. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 - PAGE 222

E. PUBLIC HEARING TO REZONE PROPERTY LOCATED OFF OF POND ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT (MANUFACTURED HOME OVERLAY DISTRICT) TO COMMERCIAL INDUSTRIAL DISTRICT

52

At the request of the applicant, Vice-Mayor Cloninger moved to continue this public hearing until January 23, 2001. This motion was seconded by Councilman Worley and carried unanimously.

IV. UNFINISHED BUSINESS:

A. ORDINANCE NO. 2773 - ORDINANCE AMENDING THE CURRENT TAXICAB ORDINANCE INCLUDING THE IMPLEMENTATION OF A NEW TAXICAB RATE SCHEDULE

Revenue Manager Deborah Crowder said that this is the consideration of a revision of the current taxicab ordinance including the implementation of a new rate table.

N.C. Gen. Stat. sec. 160A-304 allows a city to license and regulate all vehicles operated for hire in the city.

Staff has reviewed Sec. 18 of the City of Asheville Code which sets forth the provision for regulation of taxicab businesses and drivers and several minor changes have been made to bring the Code up-to-date. For example, the current language of the Code requires a vehicle to have seat belts and heaters. The revision changes the language to terms like standard safety devices, and also includes the provision for air conditioners. Other terminology changes are *medallion* to *insignia*, *Motor Transport* to *Fleet Management*, etc. The driver's renewal period has been changed from the December 31 and June 30 dates to allow expiration one year from the date of issue. In addition, Sec. 18-80 authorizes Council to create and appoint a Taxicab Advisory Board for the purpose of reviewing all items of regulation in the ordinance including rates, insurance coverage and to be presented for City Council's consideration in all odd numbered ending years.

The taxicab rate schedule, formerly included in the City's Fees and Charges Manual, has been revised and moved to the Appendix of the City Code. The last rate change was approved in 1987. The schedule is removed from the Fees and Charges Manual because taxicab rates are not fees paid to the city. They are amounts paid, by the customer, to the business. The Fees and Charges Manual retains those amounts paid to the city, by the business or driver, that are associated with the regulation of taxicab businesses and drivers.

The fares recommended for the initial drop and the charge per 1/10th of a mile are slightly higher than those presented in September since the insurance rate for the taxicab owners has increased 49-52% since then. Those fares now being recommended are as follows: (1) for the initiation (drop) of the meter $1.90; (2) for each 1/10th mile after initiation $0.20; (3) for each piece of luggage in excess of two average size traveling bags or their equivalent in size $0.25; (4) for each passenger in excess of two $2.00; and (5) for each two minutes of waiting time or fraction thereof after the first two minutes $0.40. Notwithstanding the above listing, the total fare may include the following surcharge: For each trip that initiates or terminates beyond a (1) 3 mile radius from the center of downtown = meter plus $3.00; (2) 5 mile radius from the center of downtown = meter plus $5.00; and (3) 8 mile radius from the center of downtown = meter plus $8.00. The proposed rates are proposed contingent keeping the insurance requirement at the minimum amount required by the State which after July 1, 2000, is $30,000/person; $60,000/accident; and $25,000/property.

City staff recommends Council adopt the revised ordinance and rate schedule.

Discussion surrounded the issue of why City staff was now recommending that the insurance provision remain at the State level and not be raised to what they recommended on

September 5, 2000, which was from $30,000/person; $60,000/accident; and $25,000/property to $100,000/person; $300,000/accident; and $50,000/property.

When Vice-Mayor Cloninger asked what would be the difference in premiums per vehicle for the taxicab companies if they raised the insurance requirement recommended by City staff on September 5, 2000, Ms. Crowder said that it's approximately $212 per vehicle per year more.

Councilman Peterson noted that the insurance limits are not in the proposed ordinance and asked how that would be reviewed. Ms. Crowder said that some of the logic in creating the Taxicab Advisory Board is to review accidents, review increases in costs of operating the business, review any of the regulatory items in the ordinance, and to make recommendations to City Council on a more regular basis. That Board will review the insurance requirements and if they deem it necessary to increase that coverage, it will be brought to City Council's attention.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that he has been talking with the Airport Director expressing City Council's desire that the taxicab operators be authorized to work out of the Airport. They are amenable to that and they are currently working on it. It is also his understanding that the limousine operator working out of the Airport has or is going to stop operating that, so taxicab services will be more needed out there. In addition, Councilman Hay, liaison to the Airport Authority, noted that they are attempting to re-think the whole ground transportation issue.

Vice-Mayor Cloninger asked what would be the difference in the fare that the cab companies would contend that they need to charge if there was an increase in their insurance to $100,000/person; $300,000/accident; and $50,000/property. Ms. Crowder explained why she believed it would probably double, making a taxi ride practically impossible for most of the people who depend on that transportation.

Mr. David Crook explained that he was struck by a taxicab over two years ago and he still owes on his medical bills. He urged City Council to increase their insurance requirements to $100,000/person; $300,000/accident; and $50,000/property.

Representative Martin Nesbitt, representing the taxicab companies in Asheville, explained why the State minimum insurance rates are set so low and what kind of affect that has state-wide. He spoke in support of the proposed ordinance and increased taxicab rates, keeping the insurance provisions at the State's minimum level.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2773 keeping the insurance provisions at the State's minimum level. This motion was seconded by Councilwoman Field.

Vice-Mayor Cloninger said that he would reluctantly vote in favor of this ordinance understanding the challenges that face taxicab drivers. At the same time he is really troubled by the fact that people can ride in a taxi or be struck negligently by a taxi and be seriously hurt but yet be limited to approximately $30,000 as to what they could receive, despite the fact that their medical expenses could be astronomical. Taxicab drivers do provide a valuable service in the community and we don't want to run them out of business. He felt the Taxicab Advisory Board may be the way to approach some of these challenges that are facing City Council in trying to protect the public and at the same time challenging taxicab companies as well. He explained why he did not agree that the fares would double if the insurance requirements were raised to $100,000/person; $300,000/accident; and $50,000/property.

Councilman Hay shared the concern that there is a problem with insurance coverage, but it is balanced out by the need to keep taxicab companies running. There is a portion of our community that relies on affordable transportation and he hoped that the Taxicab Advisory Board will keep their eye on this issue.

Councilman Peterson felt that City Council does need to look at raising the insurance requirements but that at this stage, they may not have enough information to make an informed decision. He encouraged staff to gather more information. One possibility might be to talk with other municipalities about joint legislative action to try to have higher insurance requirements, but to have it affordable. Under the current rates, it's difficult to get a cab and he is willing to support the higher rates with assurances from staff that it will improve the services. He did think that we should be planning to look, in a year or two, at the insurance issue again.

Councilman Worley felt that clearly what City Council is doing is balancing the need of the public for reasonable transportation through the taxicabs with the need for adequate insurance coverage. He was also hopeful that the Taxicab Advisory Board will do a good job of analyzing the situation and come back to City Council with some reasonable recommendations within a year.

The motion made by Councilman Worley and seconded by Councilwoman Field carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 22

C. ORDINANCE DENYING THE CONDITIONAL USE PERMIT TO CONSTRUCT A WAL-MART SUPERCENTER AT THE INTERSECTION OF GERBER ROAD AND HENDERSONVILLE ROAD

City Attorney Oast said that due to the holiday schedule and the massive amount of paperwork attributable to the public hearing held by City Council on November 14, 2000, he asked that City Council continue this matter until their next formal meeting.

Councilman Hay moved to continue this matter until December 19, 2000. This motion was seconded by Councilman Peterson and carried unanimously.

V. NEW BUSINESS:

A. ORDINANCE NO. 2774 - ORDINANCE AMENDING THE ORDINANCE ESTABLISHING THE CIVIC CENTER COMMISSION

City Manager Westbrook said that this is the consideration of a draft Civic Center Commission ordinance amendment that has been prepared as directed by City Council and is ready for Council's approval.

On November 3, 1999, Council directed staff to work with the Civic Center Commission to update the Civic Center Commission ordinance and bring it in line with other appointed Boards and Commissions throughout the City.

Since that initial charge from City Council, City Attorney Bob Oast, Civic Center Director David Pisha and City Manager Jim Westbrook have been working with the Civic Center Commission Chair Dr. Carl Mumpower to restructure the ordinance. The more prominent parts of the ordinance are as follows:

A. The Commission is created by City Council, and members are appointed by Council for terms of three years. The Chair of the Commission is appointed by City Council.

B. The duties of the Commission are to review and make recommendations on programming goals and objectives, to establish a procedure for handling customer service complaints, to establish committees as needed, develop and make recommendations to the Civic Center Director and City Manager regarding long-range plans of the Civic Center, to review and make recommendations on administrative policies and fees and charges, to accept gifts on behalf of the Civic Center, and to encourage the promotion of sports, recreation, entertainment and other cultural events and activities that might use services or facilities of the Civic Center.

C. The Commission would annually provide goals and objectives to the Civic Center Director for consideration in his preparation of the annual budget.

Councilman Edward Hay relayed how the current ordinance was not consistent with practice or state law.

At the City Council worksession on November 21, 2000, Dr. R. Carl Mumpower, Chair of the Civic Center Commission, said that the Commission is opposed to the City Council's appointing the Chair of the Commission. They Commission feels that City Council goes through a lot of trouble and interviews to appoint the 11 Commission members and those members should have the insight and awareness to elect their own chair.

City staff recommends that the Chair of the Commission be appointed by Council because this is a very important Commission and one in which the Council expects much work to be done as the City seeks to determine the future of the Civic Center. It is the opinion of staff that when the Chair is selected by the Council, as opposed to the Commission itself, the Chair has the full backing of the Council to move the Commission forward in concert with the goals and objectives of Council.

Councilman Hay thanked Dr. Mumpower and members of the Civic Center Commission for their diligence in working with City staff to prepare the new ordinance.

Councilman Hay said that last week he was basically arguing for appointment of the Chair by City Council. The reason why he was doing that was the Chair of the Civic Center Commission is a high profile position and has a unique job in the City and one that has opportunities for leadership. He thought this was an opportunity to develop a special relationship between City Council and it's designated Chair. He felt it would give City Council a chance to be very clear with the person they selected about what their expectations were, and also it would give them an opportunity to involve the Commission in the work of the Civic Center in a different way. It seemed like an opportunity to him to create that special place. However, the Commission members feel very strongly that selecting their own chair is an important part of what they should do. That it's a matter of respect for them and a statement by the Commission that they think their work can be better performed by selecting their own chair. His position now is not that City Council should select the Chair of the Commission. Partly because he thinks the Commission is right and partly because he wants to say to the Commission that he respects their

56.

opinion. He does think that we can create an opportunity here to give a special relationship between the City Council and the Chair of the Civic Center Commission. He proposes that the Chair be selected by the Commission and confirmed by City Council. That gives City Council the opportunity to meet with that person to discuss goals, objectives, expectations, and to build that relationship.

Councilman Peterson said that if the Commission recommended a Chair to City Council and City Council disagreed with their recommendation, then we are setting up an internal division. And, if the City Council is just going to take their recommendation as a formality and appoint whoever they recommend, then there is no point in City Council making that confirmation.

Vice-Mayor Cloninger felt City Council should let the Civic Center Commission appoint their own Chair. City Council does appoint every member of the Commission and if Council is confident enough about them that they are qualified to serve on the Commission, then they should be comfortable with the prospect that any one of them might eventually be appointed as the Chair. Secondly, he felt that the Commission members are in the best position to evaluate who they feel is best qualified to lead them. Thirdly, letting the Commission appoint their own Chair is an expression of confidence and support in the Commission as a whole.

Mayor Sitnick said that last week she was thinking that the Commission should make a recommendation of a Chair and that City Council would appoint the Chair. She agreed with all the points made and has confidence in the members of the Commission, but she would like to see better lines of communication along with more frequent communication. She would like to see something in the ordinance that actually says the Commission shall meet with the Council maybe three or four times a year at worksessions. Unlike most of the other commissions, the Civic Center Commission is high profile and has enormous public and regional interest and impact. In addition, the City taxpayers spend a huge amount of their taxes to subsidize and support the Civic Center. Therefore, she feels the Council has a greater responsibility of accountability to our taxpayers in being able to answer their questions and respond to their needs with regard to the Civic Center.

Councilman Peterson suggested the ordinance be amended so that the Civic Center Commission makes their recommendations to City Council with regard to programming goals and objectives, long range plans, and fees and charges. He also suggested they submit an annual report which City Council can review and give them structured feedback and a timeline, making sure that their goals are the goals of City Council. He asked that Section 2-62 (d) be amended to read "To develop and make recommendations to the civic center director, city manager and city council regarding long range plans for the Civic Center ..."

Vice-Mayor Cloninger asked that the monthly minutes of the Civic Center Commission be included in City Council's agenda notebook in the future.

Dr. R. Carl Mumpower, Chair of the Civic Center Commission, stated that the Commission is here to help City Council, not to work against them. No matter who appoints the Chair, they want to have a special relationship between the Commission and City Council from this point forward. They feel the problem has been the ordinance and lack of communication. They will help fix that. In fact, they have drafted a Council Relations Policy and they will do their part to start regularly communicating with City Council. He passed out the draft policy dated November 24, 2000.

Mayor Sitnick would like the Commission to meet with the Council more than annually - maybe three or four times a year at worksessions.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Hay moved to adopt the ordinance with an amendment to Sec. 2-61 (e) to read "The Commission shall have a chair to be elected by vote of a majority of the entire membership of the Commission, including vacant seats, not later than 60 days after adoption of this ordinance and annually thereafter by the same method, said election be confirmed by a vote of City Council." Said motion died for a lack of a second.

Councilman Hay then moved to adopt Ordinance No. 2774 with an amendment to Section 2-61 (e) to read "The Commission shall have a chair to be elected by vote of a majority of the entire membership of the Commission, including vacant seats, not later than 60 days after adoption of this ordinance and annually thereafter by the same method." This motion was seconded by Vice-Mayor Cloninger.

Councilman Peterson offered an amendment to Councilman Hay's motion that Section 2-62 (a) be amended to read "To review and make recommendations to the civic center director, city manager and city council on programming goals and objectives for each venue in the Civic Center."' (d) "To develop and make recommendations to the civic center director, city manager and city council regarding long range plans for the Civic Center to include, without limitation, capital improvements, new facilities and equipment, and to be available to the Council for referral or study of such matters" ; and (f) "To review and make recommendations to the civic center director, city manager and city council on proposals for changes in the fees and charges for use of Civic Center facilities."

Councilman Hay and Vice-Mayor Cloninger accepted Councilman Peterson's amendment to the original motion.

Councilman Worley offered an amendment to Councilman Hay's motion to add a new sub-section (j) in Section 2-62 to read "To meet and confer with City Council at least once a year and at such times as may be requested by City Council."

Councilman Hay and Vice-Mayor Cloninger accepted Councilman Worley's amendment to the original motion as amended.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that there will be some method of orientation for new members.

The amended motion by Councilman Hay and seconded by Vice-Mayor Cloninger carried unanimously.

At 9:36 p.m., Councilman Hay moved to excuse Councilwoman Field from the meeting. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 41

B. RESOLUTION NO. 00-216 - RESOLUTION APPOINTING MEMBERS TO THE BOARD OF ADJUSTMENT

Vice-Mayor Cloninger said that terms of Headlee Howard and Patricia Grant as Alternate members on the Board of Adjustment expire on January 21, 2001.

On November 9, 2000, it was the consensus of City Council to reappoint Mr. Howard and Ms. Grant as Alternate members to each serve an additional three year term, terms to expire on January 21, 2004, or until their successors are appointed.

Staff recommends City Council appoint two Alternate members to the Board of Adjustment.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-216. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 223

C. RESOLUTION NO. 00-217 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE DOWNTOWN COMMISSION

Vice-Mayor Cloninger said that the terms of Karen Tessier, Carol King, Alan Levy and Tim Fierle, as members on the Asheville Downtown Commission, expire on December 31, 2000.

On November 9, 2000, it was the consensus of City Council to reappoint Ms. Tessier, Ms. King, Mr. Levy and Mr. Fierle to each serve an additional three year term, terms to expire December 31, 2003, or until their successors have been appointed.

Staff recommends City Council appoint four members to the Asheville Downtown Commission.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 00-217. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 224

D. RESOLUTION NO. 00-218 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE FILM BOARD

Vice-Mayor Cloninger said that the terms of Cindy Pomeroy, Peter Loewer, Sarah Blankenship, Pam Turner, Jerry Birdwell, Bill Norwood, and Katherine Talbot expired on November 1, 2000. In addition, Eric Scheffer, Barbara Pasternack and Anne Watkins have resigned their positions, thus leaving three unexpired terms until November 1, 2001.

Upon recommendation of the Asheville Film Board, City Council instructed the City Clerk to prepare the proper paperwork to reappoint Cindy Pomeroy, Peter Loewer, Sarah Blankenship, Pam Turner, Jerry Birdwell and Bill Norwood to each serve a three year term, terms to expire November 1, 2003. In addition, they instructed the City Clerk to prepare the proper paperwork to (1) appoint Robbie Williams to serve a three year term, term to expire November 1, 2003; (2) appoint Guy Chancey to fill the unexpired term of Eric Scheffer, term to expire November 1, 2001; and (3) appoint Andrea Dray to fill the unexpired term of Anne Watkins, term to expire November 1, 2001. All terms will be until their successors have been appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 00-218. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 225

E. RESOLUTION NO. 00-219 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE-BUNCOMBE FAIR HOUSING COMMISSION

Vice-Mayor Cloninger said that Connie Barnette has resigned from the Asheville-Buncombe Fair Housing Commission, thus leaving an unexpired term until December 31, 2001.

On November 21, 2000, City Council interviewed Jim McCulley and Carol Ann Pothier.

Councilman Hay moved to appoint Jim McCulley to the Asheville-Buncombe Fair Housing Commission to serve the unexpired term of Ms. Barnette, term to expire December 31, 2001, or until his successor is appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 227

F. RESOLUTION NO. 00-220 - RESOLUTION APPOINTING A MEMBER TO THE FIREMEN'S RELIEF FUND

Vice-Mayor Cloninger said that the term of Lloyd Williams, as a member of the Firemen's Relief Fund, expires on January 1, 2001. On November 9, 2000, it was the consensus of City Council to reappoint Mr. Williams to serve an additional two year term, term to expire January 1, 2003, or until his successor has been appointed.

Staff recommends City Council appoint a member to the Firemen's Relief Fund.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-220. This motion was seconded by Mayor Sitnick and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 228

G. RESOLUTION NO. 00-221 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Cloninger said that the term of Barbara Field expires on January 19, 2001. On November 9, 2000, it was the consensus of City Council to reappoint Ms. Field to serve an additional three year term, term to expire January 19, 2004, or until her successor has been appointed.

Staff recommends City Council appoint a member to the Metropolitan Sewerage District Board of Directors.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 00-221. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 229

H. RESOLUTION NO. 00-222 - RESOLUTION APPOINTING A MEMBER TO THE PUBLIC ART BOARD

Vice-Mayor Cloninger said that Judy Swan has resigned as a member of the Public Art Board, thus leaving an unexpired term until December 31, 2001.

Upon recommendation of the Public Art Board, City Council instructed the City Clerk to prepare the proper paperwork to appoint Betty Clark to fill the unexpired term of Ms. Swan, term to expire December 31, 2001, or until her successor is appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 00-222. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 230

I. RESOLUTION NO. 00-223 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE TRANSIT COMMISSION

Vice-Mayor Cloninger said that the terms of Grace Dorn and Tom Tomlin expire on December 31, 2000.

On November 21, 2000, City Council interviewed Stacy Anderson, Ruth Chaet and Jim McCulley.

Mayor Sitnick moved to appoint Stacy Anderson and Ruth Chaet to the Asheville Transit Commission to each serve a two year term, terms to begin January 1, 2001, and expire December 31, 2002, or until their successors are appointed. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 25 – PAGE 231

VI. OTHER BUSINESS:

A. CLAIMS

The following claims were received by the City of Asheville during the period of November 3-16, 2000: Gary Ridge (Police), BellSouth (Water), Leisa Barnette (Streets), Jennifer Richter (Water) and Ricky Briggs (Sanitation).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:41 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 12, 2000 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Property Donation on Merrimon Avenue

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on Merrimon Avenue from Verne Rhoades Jr. and William W. Rhoades for the City of Asheville parks and greenway system.

The City of Asheville is interested in establishing and maintaining parks and greenway systems throughout the corporate limits of the City of Asheville. The land for Weaver Park, located on Merrimon Avenue and Murdock Avenue, was donated by Mr. & Mrs. Verne Rhoades, Sr. in memory of Mr. & Mrs. W. T. Weaver. Verne Rhoades Jr. and William W. Rhoades, in complement of the gift by their parents honoring their grandparents, have offered to donate an approximately 0.715 acre parcel on Merrimon Avenue adjacent to Weaver Park (PIN Nos. 9649.10-37-6455 and 9649.06-37-6547) to become part of Weaver Park.

A Phase I Environmental Site Assessment has been completed by Patrick Price and the property has been surveyed by J. Glenn Haynes. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for assemblage with Weaver Park.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on Merrimon Avenue from Verne Rhoades Jr. and William W. Rhoades.

New Street Name – Nettlewood Drive

Summary: The consideration of a resolution accepting the new proposed street name "Nettlewood Drive."

Nettlewood, Assoc. LLC; owners of lots in Nettlewood Professional Park, has petitioned the City of Asheville to accept the street name "Nettlewood Drive." The new street will begin at Deerlake Drive and end at Peachtree Road.

City staff recommends adoption of the resolution.

Councilman Peterson asked that he be assured that this is acceptable to the residents of Deerwood Condominiums.

Fiscal Year 2001-2002 Budget Schedule

Summary: The consideration of a motion approving the Fiscal Year 2001/2002 budget schedule.

The proposed Fiscal Year 2001/2002 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e., City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2001/2002 budget is scheduled for June 26, 2001.

City staff recommends City Council adopt the Fiscal Year 2001/2002 budget schedule.

Clean Water Trust Fund Grant for Erosion Control Program and State Grant for Erosion Control Program.

Summary: The consideration of authorizing the City to apply for grant funds to the Clean Water Management Trust Fund and the N. C. Sedimentation Control Commission Local Program Assistance Contracts Fund to partially fund the expansion of our local Stormwater/Erosion Control Division.

The Clean Water Management Trust Fund was established by the N.C. General Assembly to provide monies to help finance projects that specifically address stormwater control management as well as funding to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. Currently, $800,000.00 has been allocated in this trust fund for the period ending December, 2000. The City of Asheville is interested in applying for a grant to partially fund the expansion of our local stormwater/erosion control division. The total funding requested for this project is $231,800.00, and we are requesting $69,500.00 from this source.

The N.C. Sedimentation Control Commission Local Program Assistance Contracts Fund was established to make funds available to be used to support the start-up of new local erosion and sedimentation control programs or the enhancement of existing or expanding local programs. Currently, $150,000 has been allocated in this trust fund for the period ending January, 2001. The City of Asheville is interested in applying for a grant to partially fund the expansion of our local stormwater/erosion control division. The total funding requested for this project is $231,800.00, and we are requesting $75,000.00 from this source.

The City will match/in-kind with an additional $87,360 which will be collected through normal operations by Stormwater, and Soil and Erosion Permit fees.

City staff recommends the City Manager and/or Mayor be authorized to apply for or enter into agreements for funding through the Clean Water Management Trust Fund and the Sedimentation Control Commissions Local Program Assistance Contract Fund.

Utility Agreement with the N. C. Dept. of Transportation regarding NC 151 Pisgah Highway Phase II Roadway Project

Summary: The consideration of a resolution authorizing the Mayor to execute a Utility Agreement with the N.C. Dept. of Transportation (NCDOT), for the non-betterment relocation of an existing water main.

NCDOT is requiring the City of Asheville to relocate a 6" cast iron water main in Pisgah Highway (NC 151), between Medford Branch Road and Lower Glady Fork road, south of Candler, as a part of the highway improvements which have recently begun construction. This requirement is pursuant to current North Carolina law. NCDOT has designed the new relocated water line and has included the construction of this new water line in the NCDOT construction contract. NCDOT has also presented to the City of Asheville a Utility Agreement which reduces to writing the obligations of each party in the relocation of this water line. Funding for the Pisgah Highway water line relocation project ($633,500) is currently in the 329 Water Bond Capital Improvement Fund. The Utility Agreement for this project was reviewed with the Regional Water Authority on October 17, 2000, and action was taken by the Authority on November 21, 2000.

In the past all Utility Agreements for non-betterment relocation have been between the City of Asheville and NCDOT, although they have been reviewed with the Regional Water Authority. The Authority's action on November 21, 2000, was to adopt a resolution prepared by the Authority's attorney directing that the Utility Agreement for this project be a three-party agreement among the Authority, City, and NCDOT, and directed that the Authority's attorney meet with the City Attorney to review the language of the agreement.

The Water Agreement permits the Regional Water Authority to enter directly into contracts for work related to the water system, but the Agreement does not prohibit the City of Asheville from being the contracting party. The Water Agreement further provides that the City owns the water system and owns the assets and real property. The Authority routinely enters into contracts for construction with contractors. However, the City is the entity involved in transactions affecting its property interests in the water system assets, such as real estate acquisition or bond financing. The Water Authority has not previously been party to a Utility Agreement with NCDOT. NCDOT has traditionally preferred to contract with the City, and requires a provision in each Utility Agreement which allows NCDOT to withhold Powell Bill funds (street maintenance funds distributed annually to the City and other municipalities from State-collected gasoline taxes) from the City of Asheville if the State is not reimbursed for the expenses of relocating the water lines.

Because the City owns the system, and because the City's Powell Bill funds may be withheld in the event of non-compliance, the City should be the entity that contracts with NCDOT in the Utility Agreement. The Agreement may be amended to include a provision that describes the relationship between the City and the Authority, and this should provide the needed clarification. If there are issues between the City and the Water Authority regarding administration of the Utility Agreement, these may be addressed in a separate agreement between the City and the Authority.

The recommendation is to adopt a resolution authorizing the City to enter in the Utility Agreement with NCDOT, subject to appropriate revisions to reflect the relationship between the City and the Water Authority, and to protect the City's interests. The initial recommendation to the Regional Water Authority was for the Authority to adopt a resolution recommending the City of Asheville enter a Utility Agreement with the NCDOT. The recommendation of the Regional Water Authority, based on a revised resolution adopted on November 21, 2000, is that the City of Asheville authorize the Mayor to enter a Utility Agreement with the Authority and NCDOT.

Approval of Issuance of Bonds by Housing Authority for Oak Knoll Apartments

Summary: The consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Oak Knoll project. This is the same bond issuance that was proposed and approved last year.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount of $6,444,000 for the acquisition, rehabilitation, and equipping of a low- and moderate-income housing project in the City of Asheville. This project involves the acquisition and rehabilitation of an existing residential rental project currently known as Oak Knoll Apartments, consisting of 180 units located on Future Drive in Asheville.

This is the same bond issuance that was proposed by the Housing Authority and approved by the City last year. The law requires that the entity issuing the bonds, in this case the Housing Authority, conduct a public hearing on the question of the issuance of the bonds, and that the bonds actually issue within one year from the date of the hearing. Because the bonds in this case were not issued within a year of the October 26, 1999 public hearing of the Housing Authority, another public hearing must be held by the Housing Authority (scheduled for December 12, 2000), and the governing body's (City Council) approval is again required.

The project will be acquired by the Silver Street Development Corporation through the Oak Knoll - Asheville Limited Partnership, which will also perform the rehabilitation work. The Housing Authority will use the bond proceeds to provide financial assistance. In a meeting and public hearing held on October 26,1999, the Housing Authority found that the issuance of the bonds would further the Authority's purpose of promoting low- and moderate-income housing in Asheville, found that the developer was financially responsible and capable of fulfilling its debt repayment obligations, if the financing was provided, and that estimated costs of the acquisition and rehabilitation were not excessive. The financing team was also approved. Since nothing about the project or the developer's financial capability has changed significantly since last year, it is anticipated that the Housing Authority will confirm its earlier actions.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, concurred in by bond counsel and the attorneys for the developer and issue, this public hearing requirement will be satisfied by the public hearing to be held by the Housing Authority, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Oak Knoll project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

Councilwoman Field noted that Oak Knoll Apartments has approximately $30,000 of fees and fines against it and would like something worked out to pay this off. Ms. Patsy Meldrum, attorney representing the Housing Authority, stated that Housing Authority does not own the apartments, however, after receiving the appropriate information from the City's Building Safety Department, she would be happy to talk to the property owner and make that request.

Issuance of $13,400,000 Water Revenue Bonds

Summary: The consideration of a resolution providing for the issuance of $13,400,000 Water Revenue Bonds, Series 2001 of the City of Asheville.

The issuance of water revenue bonds is the most prudent method of financing programmed enhancements to the water system. The significant projects to be financed include: payments to N. C. Dept. of Transportation for non-betterment expenses necessitated by highway projects; renovation of existing lines; equipment and facilities; and state-mandated renovations to the Bee Tree Dam spillway

The resolution provides the particulars for issuance of the bonds, to include:

66

- $13,400,000 maximum aggregate principal amount to finance the project costs and costs of issuance;
- Retains Parker, Poe, Adams & Berstein L.L.P. as bond counsel; Robinson-Humphrey Company LLC as underwriters and Raftelis Environmental Consulting Group, Inc. as feasibility consultant;
- Approves Hunton & Williams as underwriter's counsel; The Bank of New York as trustee and Central Carolina Bank as co-trustee;
- Directs the Finance Director to file an application with the Local Government Commission (LGC) for its approval of the issuance of the bonds;
- City Council determines and requests the LGC to determine that the issuance is necessary; the principal amount is sufficient but not excessive; the projects are feasible; the City's debt management and policies are excellent and the bonds can be marketed at a reasonable cost to the City;
- Authorizes the Mayor, City Manager and Finance Director to do all things necessary for the issuance of the bonds;
- Requests that LGC sell the bonds through negotiation to Robinson-Humphrey at terms as may be agreed on but at a true interest cost not exceeding 7.5%;
- Approves, authorizes and confirms the form and content of the Preliminary Official Statement and its use by the underwriter in connection with the sale of the bonds.

City staff recommends City Council adopt the resolution.

Change in Health Benefits Administrator

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with "The Pheil Company" for administration of group medical claims and provision of specific and individual stop-loss coverage.

Since 1983 when the City first began self-funding its group benefits it has contracted with several third party administrators (TPA's) for administration of its claims and with various stop-loss reinsurers for its stop-loss needs.

The current hardening of global reinsurance markets necessitated the City securing competitive proposals this year prior to its January 1st renewal date. A very responsible and competitive proposal has been received from PAI, Inc., d/b/a The Pheil Company. This proposal as received will reduce the City's fixed costs for its program by $272,000 in the coming year. In addition to their proposal they have also committed to opening an Asheville claims office within the first quarter of the coming year. The City has never had a local TPA capacity to service its claims needs.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with "The Pheil Company" for administration of group medical claims and provision of specific and individual stop-loss coverage.

Lease of City-Owned Property at 43 Wall Street

Summary: The consideration of a resolution authorizing the City to enter into a lease for its building located at 43 Wall Street, adjacent to the parking deck.

The City owns property on the north side of Wall Street that was redeveloped in the 1980's through the use of Certificates of Participation (COPs). The City leased the property to a development corporation, which constructed the deck and some attached commercial space on the Wall Street elevation. The development corporation leased the property back to the City, and the City subleased it to the Wall Street Limited Partnership, which subleased part of the commercial space to ClimbMax in 1995. The City entered into an agreement directly with ClimbMax for the construction and use of the climbing wall on the outside of the building in 1995. These leases expired in August of 1999, and ClimbMax has continued to lease directly from the City on a monthly basis. ClimbMax desires now to enter into a lease for a period of years for the part of the building that they currently occupy, and the climbing wall.

The basic terms are that ClimbMax will lease the property for an initial term of 4-1/2 years, with an option to renew for up to five additional years. ClimbMax will pay the City a monthly rental of $1,100.00, subject to annual escalation after the first 18 months. The current rental is $900.00. Although the rental market in the downtown area might support a higher rent, the space occupied by ClimbMax is essentially unfinished, and we are limited by law as to how much “private use” income we can realize from the (non-taxable) COPs-financed structure, and $1,100 is approaching the top of that range.

Currently, the space occupied by ClimbMax is without a functioning HVAC system. Due to the unique configuration of the space used by ClimbMax, the parties propose that ClimbMax should arrange for HVAC to meet its needs, and the amount of rent reflects this. ClimbMax proposes to use natural gas heat, and a supply line for this purpose needs to be built from the Wall Street main to the building. Since the City will receive a permanent benefit from this work (estimated at $2,500.00) we are recommending that ClimbMax arrange and pay for the gas line installation, and that their first year's rent obligation be reduced by that cost.

If Council approves of the proposed lease arrangement, adoption of the resolution is recommended.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

PUBLIC ACCESS CHANNEL COMMISSION UPDATE

Ms. Beth Lazer, Chair of the Public Access Channel Commission, explained that public access television is the most powerful, non-commercial medium that community residents can use to share their ideas. It encourages programming produced by and for the general public.

Public access television can help our community by giving all voices an opportunity to be heard. It can help to: (1) empower people by providing a forum for their messages; (2) encourage public discourse and an awareness of diversity; and (3) create community by providing the means for all individuals and groups to express their ideas in a public forum.

Mass media is important in ensuring diversity in public discourse. As was stated in 1996 by the Supreme Court Justices Kennedy and Ginsburg: “Minds are not changed in streets and parks as they once were. To an increasing degree, the more significant interchanges of ideas and shaping of public consciousness occur in mass and electronic media.” Public access television can be America's electronic soapbox.

Members of the Public Access Channel Commission hope and believe that public access television will enrich the lives of the residents of Asheville just as it has across America. Anyone with a message, a camera, and the time will be able to create programming for the public access channel. Children and adults may talk about and demonstrate what it's like to live in our community. Non-profit agencies will disseminate information about their services. Social service agencies and Spanish language advocacy groups will more effectively broadcast public service messages to all local residents.

Because our local public access station will offer every resident and local organization the opportunity to stand and be heard, we believe there is no more effective media whereby the Asheville/Buncombe County community can celebrate its diversity and its common ground. Therefore, the Public Access Commission members are pleased to share our recommendations for expeditiously establishing Asheville's public access channel.

In the following report, she (1) apprised Council of their activities since they were formed in Feb, 2000; (2) offered their recommendations for establishing Asheville's public access channel; and (3) presented items which require City Council's consideration relative to setting up the channel.

Commission members have shared information about other public access operations obtained from the internet, publications, access consultants, and by visiting other facilities. Commission members visited the Greensboro Community Television (GCTV) facility and met with Executive Director Jay Lambeth. They also visited the Community Television of Knoxville (CTV) station and met with Director Dave Vogel.

Commission members met for an all-day planning session on May 31 to develop the following mission statement and identify major tasks needed to get the public access channel up and running. "The mission of the Public Access Channel is to empower every voice in our community by providing equal means and opportunity to create and present programming in keeping with First Amendment principles of free speech."

The Commission set up an electronic distribution list containing the e-mail addresses of all local residents who have expressed an interest in public access. They distribute commission meeting minutes and communicate relevant information on a regular basis. The Commission is working with City of Asheville staff to establish is own web site on the city's server.

Several articles about public access have appeared in the local media as a result of outreach efforts by Commission members. Mountain Xpress published Mark Goldstein's commentary about his attendance at the Alliance for Community Media's (ACM) annual conference this summer. Both Mountain Xpress and Asheville Citizen-Times reporters have published information about public access after interviews with Beth Lazer.

Commission members have met individually with each County Commissioner and with County Manager Wanda Greene to promote public access. The Commission Chair appeared at the County Commissioners meeting on October 3 to encourage the County Commissioners to partner with the city in establishing a single public access channel for the city and the county. Additionally, Commission members held meetings with Tim Amos, Asheville Education TV (AET) Chair; Wally Bowen, citizen activist; Mary Leonard White, Black Mountain Alderman; and Diane Gilkeson, Charter Communications' Group Director of Operations.

Mark Goldstein attended the Alliance for Community Media (ACM) annual conference in Tuscon, Arizona, in August. The Commission has agreed to host the ACM South East regional meeting in the spring of 2001. Representatives of the Education Channel Commission, Asheville's Government channel and Buncombe County's Government channel will be part of the planning team.

Commission members agree unanimously that the following steps should be taken to establish a top quality public access channel in Asheville:

1. ESTABLISH A NON-PROFIT CORPORATION TO MANAGE THE OPERATION OF THE PUBLIC ACCESS CHANNEL

The creation of a non-profit corporation is generally recognized as an advantageous approach to developing and facilitating public access in a community. Non-profit access management corporations are created specifically to manage access channels, facilities and equipment and to provide access services. They are tax-exempt and are identified as 501(c)(3) organizations. Hundreds of communities have such corporations. The Board of Directors of the non-profit should be broad-based and representative of the community.

There are many advantages to the non-profit corporation model for access management, including: (1) Demonstrated record of achievement in many communities; (2) Community-based approach to decision making; (3) Operations and programming efforts responsive to community needs; (4) Maximum insulation for local government and the cable company from program content and the liability for program content. Program producers will be accountable for program content. Oversight of this policy will be the responsibility of the non-profit board; and (5) A wider range of potential funding for special activities and projects.

Commission members believe that a new non-profit must be established to manage Asheville's public access channel. It is important that this organization be dedicated to offering public access services in our community. It is not realistic to expect that an existing non-profit will expand its mission to include managing the public access channel.

Commission members recommend that the initial board of the non-profit be comprised of current commission members. Once the non-profit has been established and bylaws approved, board membership will be open to additional community members.

The legal costs for establishing the non-profit is estimated to be $1000-$1200.

2. HIRE A CONSULTANT TO DEVELOP AN ACCESS IMPLEMENTATION PLAN

There are many cable/access consultants who are skilled at assisting communities with developing public access implementation plans. We have asked two, the Buske Group and Copen and Lind, to submit ideas for how they would assist us in activating a public access channel here in Asheville. Both consultants have offered ideas on how their services can assist in developing an access implementation plan.

An Access Implementation Plan will provide a guideline for public access governance, structure and development. It would include such items as: (1) Non-profit governance and management structure; (2) General operating rules and procedures; (3) Projected operating and capital budgets for first 3 years; (4) General facility needs (square footage, capabilities, etc.); (5) General equipment needs; and (6) Staffing needs and job descriptions.

The benefits of hiring a consultant include: (1) avoid "reinventing the wheel" thus allowing the channel to be up and running more quickly and efficiently; and (2) minimize the risk of liability by helping to establish effective operating procedures.

The cost of hiring a consultant is estimated to be between $8,000 and $10,000 plus expenses.

3. TIME LINE

Commission members agree that if City Council approves this plan by January 15, 2001, the following dates can be met:

Begin NC and federal application process to establish non-profit	January, 2001
Prepare access consultant bid request	January, 2001
Hire access consultant by	March, 2001
Begin implementing consultant's recommendations	May, 2001

With regard to a facility, public access television facilities run the gamut from a former movie studio in Manhattan to a camcorder and playback deck in the office of a local cable company in a rural town. Typically though, each access center has office space, facilities for teaching community members video production skills, a studio for producing taped and/or live shows, storage space for field equipment which can be checked out by producers, one or more editing stations where producers can edit their shows, and a room for the playback system and equipment which transfers the video and audio signal to the cable company.

Most facilities are open to the public at least 8-12 hours a day, six days a week. The busiest times are late afternoons and weekends.

In most cases, the municipality provides the access facility at a nominal rental charge ($1.00/year). She presented a sample budget showing that they estimate that renting a 2000 square foot space in Asheville would cost approximately $20,000 per year.

With regard to operational funding, Commission members anticipate that the $340,000 set aside in the franchise agreement for public access equipment and facilities will be sufficient to fund initial video equipment, furniture and fixtures, phones, computers, space renovations, etc. A detailed capital budget for our needs will be prepared as part of the Access Implementation Plan.

On the other hand, Commission members are concerned about finding sources for the channel's operational funds. Across the country, the primary funding sources for pubic access services are grants from the cable company and grants from the city (usually a portion of cable franchise fees received by the city). For example, Greensboro Community Television, Inc. receives 51.5% ($125,000) annually from the city as part of the city's franchise agreement. Private donations from individuals, foundations and corporations almost always contribute a very small part of the income.

She reviewed a sample operating budget which included the types of income sources and expenditures we anticipate in the proposed budget to be developed by the consultant. These numbers do not represent the proposed budget of the channel. That information will become available after the consultant completes the Implementation Plan. The sample budget merely shows the types of income sources and operating expenses that we anticipate at this time.

In the sample budget, even after the city makes available the funding from the pass-through fees as indicated in the franchise agreement, the pubic access channel cannot meet expenses. Additional monies must be found to support the operation of the public access channel. The exact amount will not be known until after the consultant's report has been completed.

Commission members are committed to help find funding for operating expenses from within the community. We believe that we can form an Advisory Board comprised of community leaders who can assist with obtaining grants which can be used to pay for some operating the channel. Work on forming the Advisory Board has already begun. Once the non-profit has been established and the channel operational, it is hoped that income sources such as grants, donations, usage fees and member dues will be forthcoming.

71

To help with operating funding, the Commission recommends that the City form a partnership with Buncombe County and Black Mountain to establish a single public access channel to serve city and county subscribers. Since the county and Black Mountain have separate franchise agreements with Charter Communications and separate public access channel funding sources, a partnership would have many advantages and would best serve the residents of the city and county in the following ways: (1) the combined funding would ensure that the management of a single station will have sufficient funds for equipment, facilities and operational expenses; (2) the program offerings would be richer because program sponsors would be drawn from a wider geographic area; and (3) cost to the city will be less.

Commission members encourage City Council to explore a public access partnership arrangement with the County and it's other municipalities but hopes that such negotiations do not delay implementation of a public access channel in the city.

In summary, the Commission members ask that City Council take action on the following items no later than January 15, 2001:

1 Provide $1,000-$1,200 in funding so that the Commission can establish a non-profit corporation to manage the Public Access Channel.

2. Provide a grant of $8,000-$10,000 to the newly formed non-profit for hiring a consultant to advise on organizational and budget matters.

3. Assist commission members with identifying city owned space for the facility.

4. Include sufficient operational funds in the city's budget over and above the pass-through fees to support the expenses of a Public Access Channel while working with the County Commissioners and the Black Mountain Aldermen to establish a single Public Access Channel for the city and county.

Ms. Lazer expressed her appreciation to the members of Asheville City Council and to Robin Nix and Jeff Reble for their extraordinary support of this endeavor and to the members of the Commission for their energy, dedication and tireless commitment to our goal.

Vice-Mayor Cloninger thanked the Commission for taking on this challenge and bringing back their recommendations.

Ms. Lazer answered several questions from Council noting that Buncombe County has offered their Assistant County Attorney to help the Commission to become a non-profit. With regard to the possibility of forming a partnership with Buncombe County, Ms. Lazer said that the City's funding could be used for equipment and the facility and County funds could be used for operational purposes.

City Council members gave Ms. Lazer ideas about foundations and possible facility space.

City Manager Westbrook said that he has met with the Buncombe County Manager and she indicated that she would recommend to the County Commissions that they pay something in operational costs for the channel, however, they want to finish their negotiations with the cable company first, which may be the spring of 2001.

Mayor Sitnick wanted to make sure that recognizing that Buncombe County wants the City of Asheville to take a lead in this partnership, she wanted to make sure that the process remains fair and equitable to the Asheville taxpayers.

It was the consensus of City Council to direct the City Manger to work with the County Manager on the details of providing public access channel operations for the City and County and to recommend the plan of governance which would best facilitate the public purpose of the activity.

Mayor Sitnick asked that the record show that City Council has received this information and instructed the City Manager to place a budget amendment for the consultant on the next formal City Council agenda.

At the request of Mayor Sitnick, Councilman Worley moved to amend the order of the agenda and proceed with an item regarding relocation assistance for the Merrimon House tenants. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION NO. 00-224 - RESOLUTION APPROVING AN AMENDMENT TO THE COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM IN THE 2000 CONSOLIDATED ACTION PLAN

Councilman Worley moved to excuse Councilwoman Bellamy from this matter due to a conflict of interest. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Community Development Director Charlotte Caplan said that this is the consideration of a motion to amend the 2000 Action Plan to provide Community Development Block Grant (CDBG) funding for the relocation expenses of tenants of Merrimon House.

City Council is familiar with the issues surrounding the eviction of tenants at 135 Merrimon Avenue because of necessary code enforcement action. Among the many problems facing the tenants in their search for new homes, there is one that the City can directly help with. Those tenants that find new accommodation are faced with immediate cash payments for rent deposits, utility pre-payments, and the like. Staff recommend meeting these costs with CDBG funds.

The 2000 Action Plan included a $25,000 allocation for "voluntary relocation assistance to low/moderate income persons being displaced by code enforcement or temporarily displaced by a rehabilitation project." However, this program, like several others, was contingent on receiving program income from the sale of the Biltmore Avenue property and has not yet been implemented.

If this allocation is increased to $36,000 and implemented immediately, it could provide up to $1,000 per tenant relocated plus $200 in counseling and case management expenses for the agency or agencies assisting the tenant (estimating a maximum of 30 people to be relocated). The funds would be routed through the agencies and would be paid to landlords, utility companies, etc., not to the tenants themselves.

In the event that the Biltmore Avenue properties are not sold in this fiscal year, there are sufficient contingency funds to cover this expenditure. A public hearing is not required.

She noted that the resolution also adopts the Optional Relocation Assistance Policy for emergency relocation assistance.

City staff recommends (1) increasing the CDBG allocation for relocation assistance from $25,000 to $36,000 (2) entering immediately into an agreement with the appropriate non-profit agencies to direct assistance to the displaced tenants of 135 Merrimon Avenue; and (3) adoption of the resolution including the Optional Relocation Assistance Policy.

Councilwoman Field said it was her understanding that TM Equities Inc. (current owners) had sent eviction notices on November 7, 2000, by certified mail to the tenants of 135 Merrimon Avenue, however, they were intercepted by the previous owner Mr. Janney and the tenants did not receive those notices.

Ms. Karen Keenan. Executive Director of the Affordable Housing Coalition, said that the tenants received a second notice the first week in December from TM Equity Inc. asking them to vacate the property immediately. The team set up to identify needs for the tenants is moving quickly to matching the needs of the residents with housing. It was her understanding the Mr. Janney is still collecting rent from the tenants (even though he does not own the property) and it is also her understanding that people have been moving in since November 8, 2000.

All of Council expressed concern about the activities of Mr. Janney regarding his collecting of rent and the interception of the certified mail to the tenants.

Ms. Margie Mann, representative of TM Equity Inc., stressed that this is a condemned piece of property and they are trying to allow time for the current tenants to find other housing. They do not want to put these people out of the house with no place to go. They acquired this property after a lengthy bankruptcy proceeding. It was her understanding that Mr. Janney is on the property to feed the people in the house. He also said that he would help them move. She said that if they find Mr. Janney is on the property for any other reason than to feed the people, they would have him arrested for trespassing.

City Attorney Oast said that he is aware of the allegations and they are investigating them. He said that, if appropriate, the City will pursue appropriate action when they get a clear idea of what is actually taking place.

Councilman Peterson asked about what assistance the City could give to the tenants who have moved into the building after November 28, 2000. Ms. Caplan suggested that since the Affordable Housing Coalition has clear knowledge of who is currently living in the house, that a line be drawn to assist only those who reside at 135 Merrimon Avenue today.

Councilwoman Field moved to waive the rules and take formal action at this meeting. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 00-224. This motion was seconded by Councilman Worley and carried unanimously.

Councilman Hay stressed that food and clothing are other necessities the tenants of 135 Merrimon Avenue need and he urged the citizens to remember that as well.

RESOLUTION BOOK NO. 26 – PAGE 232

WEST END/CLINGMAN AVENUE DESIGN PRESENTATION

Vice-Mayor Cloninger moved to excuse Councilwoman Bellamy from this matter due to a conflict of interest. This motion was seconded by Councilman Worley and carried unanimously.

74

Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that recently, consultants retained to develop an urban infill redevelopment plan for the West End/Clingman Avenue Neighborhood Association (WECAN) completed a week-long design workshop. These consultants, led by the Florida design firm Correa Valle Valle, met with residents, local design professionals, local real estate professionals, developers, City staff, other agency officials, and other interested parties and have developed an extensive design concept/redevelopment plan for the WECAN area.

Ms. Tamara Calabria, WECAN Community Design Coordinator, said that the WECAN Community Design Workshop took place on November 10, 2000. Mountain Housing Opportunities lead this effort in partnership with the West End/Clingman Avenue Neighborhood Association, the City of Asheville, RiverLink, Pullarium Redevelopment, and other neighborhood businesses and property owners. This plan builds upon the recommendations of the City's 2010 Plan. This effort was funded with Community Development Block Grant funds in addition to contributions from private foundations. Correa Valle Valle Inc. lead an interdisciplinary design team of local and out of town consultants. In the first days of the community design workshop, the core interest group neighborhood residents, business and property owners participated in a visioning session to clarify goals for the neighborhood's future. The visioning session identified several key projects within the neighborhood. Initial concept designs were developed and presented in "focused discussions" to representatives of utility and transportation entities, private developers, bankers, community service organizations and arts organizations for feedback.

One key area is I-240 and Patton Avenue. I-240 and Patton Avenue are critically important edges in the neighborhood. The plan calls for a new Patton Square to serve as a gateway to the City from west Asheville, building on John Nolen's 1922 Asheville City Plan. The WECAN Community Design also builds on the idea that Patton Avenue become a boulevard.

Another key area is Clingman Avenue. Clingman Avenue is the main spine of the neighborhood and an important corridor linking downtown to the river/warehouse district. The plan calls for new infill development of a neighborhood commercial center on the vacant land on the north end of Clingman Avenue, between Patton and Hilliard, as well as a traffic circle at the intersection of Hilliard and Clingman. The plan proposes new streetscaping, pocket parks, and infill housing on the east side of Clingman Avenue, as well as improved service drives for homes on the west side of Clingman, and the development of a passive recreation park and greenway corridor in the urban forest west of Clingman Avenue.

Another key area is the "Top of the Hill". This area is prime property in the neighborhood because it is a broad, level area with panoramic views of downtown and the surrounding mountains. Pioneer Welding and the Asheville Bus Transit Facility currently occupy this site. The plan proposes new infill housing, streets, neighborhood parks, and civic buildings such as schools or churches.

Another key project is an arts district. The plan recommends expanding the current river/warehouse district into an arts district to include future greenway and park development fronted by commercial development, entertainment venues, a cotton mill museum, and housing.

The plan (1) recommends new housing and commercial development on Roberts Street; (2) suggests adding pedestrian and bike lanes to Haywood Street Bridge; and (3) suggests that a new passenger rail terminal be located off Riverside Drive, within this arts district.

An important component of the plan proposes an overlay of innovative "green infrastructure" be incorporated into open spaces and parks to treat stormwater runoff before it reaches the French Broad River.

75

By planning stormwater management on a watershed scale, treatment facilities can be turned into public amenities and opportunities for environmental restoration and education.

The following summarizes recommendations for the implementation of the plan: (1) begin Clingman Avenue Streetscape Improvements; (2) Begin Haywood Road improvements; (3) plan for a regional stormwater management infrastructure; (4) complete the historic district nomination; (5) relocate the transit authority; (6) support the infill of the urban fabric; (7) rebuild the cotton mill as a museum; (8) locate the passenger rail terminal within the arts district; (9) support converting part of I-240 into a boulevard; (10) support the creation of an arts district; and (10) build a network of greenways, bike paths, and walkways throughout the neighborhood.

The WECAN Citizen's Master Plan demonstrates that there is great potential to build on the neighborhood's existing resources and support sustainable future development that will be a tremendous resource both for the neighborhood and the broader Asheville community.

On behalf of City Council, Mayor Sitnick thanked the Design Steering Committee for their hard work in developing this plan.

ANNUAL AUDIT REPORT

Finance Director Bill Schaefer said that this is a presentation of the City of Asheville Annual Audit Report for the Fiscal Year ended June 30, 2000.

City Council retained an independent audit firm, Crisp Hughes Evans LLP of Asheville, North Carolina, to perform an audit of the City of Asheville for the Fiscal Year ended June 30, 2000, as required by North Carolina General Statute sec. 159-34. He said the auditors gave the City an unqualified audit opinion. (The term "unqualified" means that the auditors' opinion that the financial statements present fairly the financial position of the City is not modified by reservations or restrictions.)

Mr. Brian Broom, Senior Manager of Crisp, Hughes Evans LLP, gave a brief presentation of their findings. He said their report for the 2000 audit expresses and unqualified opinion (clean) on the fair representation of the general purpose financial statements in all material respects, in conformity with generally accepted accounting principles. The Local Government Commission recommends governmental entities maintain, at a minimum fund balance equal to 8% of expenditures. The City's fund balance for 2000 is 14%.

Mr. Schaefer answered various questions from Council regarding the financial report.

PRESENTATION ON MORATORIUM ON DEATH PENALTY

Ms. Noel Nickle, Chair of the Western North Carolina Chapter of People of Faith Against the Death Penalty, stated that the city and county government across North Carolina (Carrboro, Chapel Hill, Charlotte, Davidson, Durham, Greensboro, Hillsborough, Orange County and Winston-Salem) have passed moratorium resolutions and urged City Council to adopt a resolution for a moratorium on executions at least until this state and the nation implement policies and procedures which (1) ensure that death penalty cases are administered fairly and impartially, in accordance with basic due process; (2) minimize the risk that innocent persons may be executed; and (3) prevent the execution of mentally retarded persons and persons who were under the age of 18 at the time of their offenses. She stated that over 21,000 signatures supporting the moratorium have been collected and will be delivered to the United Nations later this week. In addition, 34 area religious leaders have asked for Council to support a moratorium as well.

Mr. Frank Goldsmith stated that they are not asking that City Council support complete and final abolition of the death penalty, but to help create a 'breathing space' during which the citizens of North Carolina and the nation may review, debate, and improve the administration of justice. This is what a moratorium on executions would provide.

Reasons for supporting such a moratorium are numerous, compelling, and widely publicized. For over 25 years state and federal legislatures have tried to create death penalty statutes that would be fair and impartial. These efforts have failed. Numerous recent studies document that racial bias and discrimination against poor defendants remain wide-spread. Such defendants often cannot afford the level of legal assistance needed in capital cases; reports of inadequate counsel continue to rise. At the same time, at the federal level and in many state jurisdictions the right of appeal in death cases has been severely curtailed.

Even more widely publicized have been the many instances in which prisoners on Death Row have been found to be innocent – often after years of confinement, and in some cases only days away from their scheduled executions. Thus far 87 people, including two North Carolinians, have been found innocent and released from Death Row; these numbers will no doubt continue to grow.

Some prosecutors, including our own, have suggested that such releases merely prove that our system of justice works. But many of these releases have been accomplished through investigations carried out by persons or groups outside the criminal justice system. More to the point, a system in which a significant number of innocent persons spend years in prison for crimes they did not commit cannot be considered fair or just. These 87 cases of mistaken conviction – 87 and counting – call out for a sober reassessment of our administration of justice.

He felt that it is appropriate for City Council to take a stand on this issue because Asheville maintains a police department and it is the police who conduct the initial investigations at the crime scenes. The citizens of Asheville had a right to ask their government to take a stand.

Mr. Scott Barber also urged City Council to enact a legal moratorium on executions at least until such time as our system of justice shall be rendered more fair, impartial and just.

Mayor Sitnick and Councilman Hay asked that any formal action on this issue be delayed until City Council has had an opportunity to hear input from other Asheville residents and to review additional information.

Councilwoman Bellamy and Councilman Peterson felt the current system is flawed and a moratorium on executions is appropriate.

It was the consensus of City Council to advise City Clerk Burleson of the date this matter is to be placed on a formal meeting. She in turn will notify Ms. Nickle, Mr. Barber and Mr. Goldstein of that date.

NEXT COMMUNITY MEETING

It was the consensus of City Council to hold it's January 30, 2001, community meeting in the new Asheville Police Department's Community Room, located at 100 Court Plaza, beginning at 7:00 p.m.

CITY COUNCIL RETREAT

City Manager Westbrook advised City Council that their annual retreat will be on January 19 and 20, 2001, at the Pinecrest Inn in Tryon, North Carolina.

BOARDS AND COMMISSIONS

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Diana Bilbrey to the Asheville Film Board to fill the unexpired term of Barbara Pasternack, term to expire November 1, 2001.

With regard to the appointment to fill Doug Spell's unexpired term on the Metropolitan Sewerage District Board of Directors, Councilwoman Field, current member on the Board, said the Board needs a person with strong government management skills, similar to Doug Spell's when he was Assistant City Manager. City Manager Jim Westbrook recommended City Council appoint City Engineer Cathy Ball in that her department works on water and sewer contracts for annexation projects that the City has undertaken. The new Transportation Division (located in her department) is charged with coordinating transportation issues including road improvements within the City; therefore, she has a working knowledge of the N.C. Dept. of Transportation projects that would be of value to the MSD Board. After discussion, it was the consensus of City Council to delay making an appointment to the Board until January 9, 2001.

WORKSESSIONS

It was the consensus of City Council to invite their representatives on the Airport Authority, Housing Authority, Metropolitan Sewerage District Board of Directors, Regional Water Authority, School Board and Tourism Development Authority to a worksession once a year.

POSTING OF FLYERS AND NOTICES

Councilman Peterson stated that he had received a letter from Mr. L. Barry Shields, Owner of Blimpie on Biltmore Avenue. Mr. Shields requested that an ordinance be enacted prohibiting any type of leaflets, placards, etc. from being posted anywhere on the outside of any building, power pole, traffic signal box, etc. except city authorized and provided spaces. He felt that there should be a progressive fine for each infraction and that the ordinance should be enforced. Councilman Peterson felt this issue should be addressed as an upcoming worksession item.

Councilwoman Field noted that the Asheville Downtown Commission and the Asheville Downtown Association has worked on this in the past and this issue should be remanded back to them.

CLOSED SESSION

At 6:10 p.m., Councilwoman Bellamy moved to go into closed session to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease – statutory authorization is contained in G.S. 143-318.11(a)(5). This motion was seconded by Councilman Hay and carried unanimously.

At 6:30 p.m., Councilman Hay moved to come out of closed session. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:30 p.m.

CITY CLERK

Leni Sitnick
MAYOR

Tuesday - December 19, 2000 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; Councilwoman Terry Bellamy; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

CHANGES TO THE AGENDA

Councilman Hay asked that he be allowed to give a report from the Task Force on the Future of the Civic Center regarding an architectural feasibility study under Other Business.

I. PROCLAMATIONS:

A. RESOLUTION NO. 00-225 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A PROPERTY DONATION ON MERRIMON AVENUE FROM VERNE RHOADES JR. AND WILLIAM W. RHOADES

Mayor Sitnick recognized Mr. and Mrs. Verne Rhodes Jr. and thanked them for their kind donation of property.

Field Services Coordinator Ed Vess said that this is the consideration of a resolution authorizing the Mayor to accept a donation of real property on Merrimon Avenue from Verne Rhoades Jr. and William W. Rhoades for the City of Asheville parks and greenway system.

The City of Asheville is interested in establishing and maintaining parks and greenway systems throughout the corporate limits of the City of Asheville. The land for Weaver Park, located on Merrimon Avenue and Murdock Avenue, was donated by Mr. & Mrs. Verne Rhoades, Sr. in memory of Mr. & Mrs. W. T. Weaver. Verne Rhoades Jr. and William W. Rhoades, in complement of the gift by their parents honoring their grandparents, have offered to donate an approximately 0.715 acre parcel on Merrimon Avenue adjacent to Weaver Park (PIN Nos. 9649.10-37-6455 and 9649.06-37-6547) to become part of Weaver Park.

A Phase I Environmental Site Assessment has been completed by Patrick Price and the property has been surveyed by J. Glenn Haynes. The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for assemblage with Weaver Park.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on Merrimon Avenue from Verne Rhoades Jr. and William W. Rhoades.

Councilman Worley, as well as the rest of City Council, thanked the Rhodes for their very generous gift.

80

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 00-225. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 233

B. AWARD FROM WEST ASHEVILLE BUSINESS ASSOCIATION

Councilman Worley said that on behalf of the City Council, he accepted the West Asheville Business Association's monthly beautification award to the City of Asheville for their work on the triangle part at Westwood Road and Haywood Road and also for the Christmas wreaths along Haywood Road.

II. CONSENT:

City Attorney Oast said that with regard to Item J, the resolution in front of Council indicates that it's "water and sewer system revenue bonds," however, the resolution City Council should consider should read that it is only "water revenue bonds."

City Attorney Oast also said that with regard to Item M, the lease term (including options) is being requested for 9-1/2 years. Certificates of Participation (CO) on the Wall Street parking deck, of which this building is part, will be retired in February 2008, which means that the percentage cap on private activity income will no longer be applicable, and the City may thereafter seek a market rental for the property. Accordingly, the City is modifying the length of the option from the current 5 years to 2-1/2 years or 30 months, so that the lease and any extensions will expire on January 31, 2008, when the CO's are retired. The tenant and his attorney are agreeable.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON NOVEMBER 28 2000, AND THE WORKSESSION HELD ON DECEMBER 12, 2000

B. RESOLUTION NO. 00-226 - RESOLUTION ADOPTING THE 2001 SCHEDULED CITY COUNCIL MEETINGS

Summary: City Council worksessions begin at 3:00 p.m. on the first and third Tuesdays of each month in the First Floor North Conference Room in the City Hall Building. City Council formal meetings begin at 5:00 p.m. on the second and fourth Tuesday of each month in the Council Chamber located on the Second Floor in the City Hall Building.

RESOLUTION BOOK NO. 26 – PAGE 234

C. ORDINANCE NO. 2775 - BUDGET AMENDMENT, IN THE AMOUNT OF $8,000, FOR A CONSULTANT TO DEVELOP AN ACCESS IMPLEMENTATION PLAN FOR THE PUBLIC ACCESS CHANNEL

Summary: Request was made by the Public Access Channel Commission at Council's worksession on December 12, 2000.

ORDINANCE BOOK NO. 19 – PAGE 45

D. RESOLUTION NO. 00-227 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "NETTLEWOOD RIVE" BEGINNING AT DEERLAKE DRIVE AND ENDING AT PEACHTREE ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Nettlewood Drive."

Nettlewood, Assoc. LLC; owners of lots in Nettlewood Professional Park, has petitioned the City of Asheville to accept the street name "Nettlewood Drive."
The new street will begin at Deerlake Drive and end at Peachtree Road.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 235

E. MOTION ADOPTING THE FISCAL YEAR 2001-2002 BUDGET SCHEDULE

Summary: The consideration of a motion approving the Fiscal Year 2001/2002 budget schedule.

The proposed Fiscal Year 2001/2002 budget schedule identifies key dates for completion of all phases of the budget process leading to adoption. Certain administrative phases of the budget process including the distribution of budget materials and instructions have already begun or have been previously approved by City Council (i.e., City Council Retreat). Other key phases include submission of departmental requests, presentation of the proposed budget to City Council, a public hearing and formal adoption. Adoption of the Fiscal Year 2001/2002 budget is scheduled for June 26, 2001.

City staff recommends City Council adopt the Fiscal Year 2001/2002 budget schedule.

F. RESOLUTION NO. 00-228 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR GRANT FUNDS TO THE CLEAN WATER MANAGEMENT TRUST FUND TO PARTIALLY FUND THE EXPANSION OF OUR LOCAL STORMWATER/EROSION CONTROL DIVISION

Summary: The consideration of authorizing the City to apply for grant funds to the Clean Water Management Trust Fund and the N. C. Sedimentation Control Commission Local Program Assistance Contracts Fund to partially fund the expansion of our local Stormwater/Erosion Control Division.

The Clean Water Management Trust Fund was established by the N.C. General Assembly to provide monies to help finance projects that specifically address stormwater control management as well as funding to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits. Currently, $800,000.00 has been allocated in this trust fund for the period ending December, 2000. The City of Asheville is interested in applying for a grant to partially fund the expansion of our local stormwater/erosion control division. The total funding requested for this project is $231,800.00, and we are requesting $69,500.00 from this source.

The N.C. Sedimentation Control Commission Local Program Assistance Contracts Fund was established to make funds available to be used to support the start-up of new local erosion and sedimentation control programs or the enhancement of existing or expanding local programs. Currently, $150,000 has been allocated in this trust fund for the period ending

January, 2001. The City of Asheville is interested in applying for a grant to partially fund the expansion of our local stormwater/erosion control division. The total funding requested for this project is $231,800.00, and we are requesting $75,000.00 from this source.

The City will match/in-kind with an additional $87,360 which will be collected through normal operations by Stormwater, and Soil and Erosion Permit fees.

City staff recommends the City Manager and/or Mayor be authorized to apply for or enter into agreements for funding through the Clean Water Management Trust Fund and the Sedimentation Control Commissions Local Program Assistance Contract Fund.

RESOLUTION BOOK NO. 26 – PAGE 236

G. RESOLUTION NO. 00-229 - RESOLUTION AUTHORIZING THE CITY TO APPLY FOR GRANT FUNDS TO THE N. C. SEDIMENTATION CONTROL COMMISSION LOCAL PROGRAM ASSISTANCE CONTRACTS FUND TO PARTIALLY FUND THE EXPANSION OF OUR LOCAL STORMWATER/EROSION CONTROL DIVISION

Summary: See Consent Agenda Item "F" above.

RESOLUTION BOOK NO. 26 – PAGE 237

H. RESOLUTION NO. 00-230 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A UTILITY AGREEMENT WITH THE N.C. DEPARTMENT OF TRANSPORTATION FOR NON-BETTERMENT RELOCATION OF WATER LINES IN THE NC 151 PISGAH HIGHWAY PHASE II ROADWAY PROJECT

Summary: The consideration of a resolution authorizing the Mayor to execute a Utility Agreement with the N.C. Dept. of Transportation (NCDOT), for the non-betterment relocation of an existing water main.

NCDOT is requiring the City of Asheville to relocate a 6" cast iron water main in Pisgah Highway (NC 151), between Medford Branch Road and Lower Glady Fork road, south of Candler, as a part of the highway improvements which have recently begun construction. This requirement is pursuant to current North Carolina law. NCDOT has designed the new relocated water line and has included the construction of this new water line in the NCDOT construction contract. NCDOT has also presented to the City of Asheville a Utility Agreement which reduces to writing the obligations of each party in the relocation of this water line. Funding for the Pisgah Highway water line relocation project ($633,500) is currently in the 329 Water Bond Capital Improvement Fund. The Utility Agreement for this project was reviewed with the Regional Water Authority on October 17, 2000, and action was taken by the Authority on November 21, 2000.

In the past all Utility Agreements for non-betterment relocation have been between the City of Asheville and NCDOT, although they have been reviewed with the Regional Water Authority. The Authority's action on November 21, 2000, was to adopt a resolution prepared by the Authority's attorney directing that the Utility Agreement for this project be a three-party agreement among the Authority, City, and NCDOT, and directed that the Authority's attorney meet with the City Attorney to review the language of the agreement.

The Water Agreement permits the Regional Water Authority to enter directly into contracts for work related to the water system, but the Agreement does not prohibit the City of Asheville from being the contracting party. The Water Agreement further provides that the City owns the water system and owns the assets and real property. The Authority routinely enters into contracts for construction with contractors. However, the City is the entity involved in transactions affecting its property interests in the water system assets, such as real estate acquisition or bond financing. The Water Authority has not previously been party to a Utility Agreement with NCDOT. NCDOT has traditionally preferred to contract with the City, and requires a provision in each Utility Agreement which allows NCDOT to withhold Powell Bill funds (street maintenance funds distributed annually to the City and other municipalities from State-collected gasoline taxes) from the City of Asheville if the State is not reimbursed for the expenses of relocating the water lines.

Because the City owns the system, and because the City's Powell Bill funds may be withheld in the event of non-compliance, the City should be the entity that contracts with NCDOT in the Utility Agreement. The Agreement may be amended to include a provision that describes the relationship between the City and the Authority, and this should provide the needed clarification. If there are issues between the City and the Water Authority regarding administration of the Utility Agreement, these may be addressed in a separate agreement between the City and the Authority.

The recommendation is to adopt a resolution authorizing the City to enter in the Utility Agreement with NCDOT, subject to appropriate revisions to reflect the relationship between the City and the Water Authority, and to protect the City's interests. The initial recommendation to the Regional Water Authority was for the Authority to adopt a resolution recommending the City of Asheville enter a Utility Agreement with the NCDOT. The recommendation of the Regional Water Authority, based on a revised resolution adopted on November 21, 2000, is that the City of Asheville authorize the Mayor to enter a Utility Agreement with the Authority and NCDOT.

RESOLUTION BOOK NO. 26 – PAGE 238

I. RESOLUTION NO. 00-231 - RESOLUTION APPROVING ISSUANCE OF MULTI-FAMILY HOUSING REVENUE BONDS FOR OAK KNOLL APARTMENTS

Summary: The consideration of a resolution approving the issuance of revenue bonds by the Housing Authority for the Oak Knoll project. This is the same bond issuance that was proposed and approved last year.

The Housing Authority of the City of Asheville proposes to issue revenue bonds in the amount of $6,444,000 for the acquisition, rehabilitation, and equipping of a low- and moderate-income housing project in the City of Asheville. This project involves the acquisition and rehabilitation of an existing residential rental project currently known as Oak Knoll Apartments, consisting of 180 units located on Future Drive in Asheville.

This is the same bond issuance that was proposed by the Housing Authority and approved by the City last year. The law requires that the entity issuing the bonds, in this case the Housing Authority, conduct a public hearing on the question of the issuance of the bonds, and that the bonds actually issue within one year from the date of the hearing. Because the bonds in this case were not issued within a year of the October 26, 1999 public hearing of the Housing Authority, another public hearing must be held by the Housing Authority (scheduled for December 12, 2000), and the governing body's (City Council) approval is again required.

The project will be acquired by the Silver Street Development Corporation through the Oak Knoll - Asheville Limited Partnership, which will also perform the rehabilitation work. The Housing Authority will use the bond proceeds to provide financial assistance. In a meeting and public hearing held on October 26,1999, the Housing Authority found that the issuance of the bonds would further the Authority's purpose of promoting low- and moderate-income housing in Asheville, found that the developer was financially responsible and capable of fulfilling its debt repayment obligations, if the financing was provided, and that estimated costs of the acquisition and rehabilitation were not excessive. The financing team was also approved. Since nothing about the project or the developer's financial capability has changed significantly since last year, it is anticipated that the Housing Authority will confirm its earlier actions.

The bonds being issued are "private activity bonds" under IRS regulations. Essentially, this is a form of financing that allows private entities to engage in public purpose projects, with some of the advantages of tax exempt financing. There are many requirements and limitations in the use of the money derived from bond proceeds. One of the requirements is that the governmental unit having jurisdiction over the area in which the activity occurs must approve the issuance of the bonds, and this approval may only come after a public hearing. According to the Housing Authority's attorney, concurred in by bond counsel and the attorneys for the developer and issue, this public hearing requirement will be satisfied by the public hearing to be held by the Housing Authority, and a separate hearing by the City is not necessary. Our bond counsel has confirmed this, and this is the position of the Local Government Commission.

If City Council wishes to approve issuance of the revenue bonds for the Oak Knoll project, as required by Sec. 147(f) of the Internal Revenue Code, adoption of the resolution is recommended.

RESOLUTION BOOK NO. 26 – PAGE 239

J. RESOLUTION NO. 00-232 - RESOLUTION PROVIDING FOR THE ISSUANCE OF $13,400,000 WATER REVENUE BONDS, SERIES 2001 OF THE CITY OF ASHEVILLE

Summary: The consideration of a resolution providing for the issuance of $13,400,000 Water Revenue Bonds, Series 2001 of the City of Asheville.

The issuance of water revenue bonds is the most prudent method of financing programmed enhancements to the water system. The significant projects to be financed include: payments to N. C. Dept. of Transportation for non-betterment expenses necessitated by highway projects; renovation of existing lines; equipment and facilities; and state-mandated renovations to the Bee Tree Dam spillway

The resolution provides the particulars for issuance of the bonds, to include:

- $13,400,000 maximum aggregate principal amount to finance the project costs and costs of issuance;
- Retains Parker, Poe, Adams & Berstein L.L.P. as bond counsel; Robinson-Humphrey Company LLC as underwriters and Raftelis Environmental Consulting Group, Inc. as feasibility consultant;
- Approves Hunton & Williams as underwriter's counsel; The Bank of New York as trustee and Central Carolina Bank as co-trustee;
- Directs the Finance Director to file an application with the Local Government Commission (LGC) for its approval of the issuance of the bonds;
- City Council determines and requests the LGC to determine that the issuance is necessary; the principal amount is sufficient but not excessive; the projects are feasible; the City's debt management and policies are excellent and the bonds can be marketed at a reasonable cost to the City;

- Authorizes the Mayor, City Manager and Finance Director to do all things necessary for the issuance of the bonds;
- Requests that LGC sell the bonds through negotiation to Robinson-Humphrey at terms as may be agreed on but at a true interest cost not exceeding 7.5%;
- Approves, authorizes and confirms the form and content of the Preliminary Official Statement and its use by the underwriter in connection with the sale of the bonds.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 26 – PAGE 240

K. RESOLUTION NO. 00-233 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH PAI, INC., D/B/A THE PHEIL COMPANY, FOR THIRD PARTY ADMINISTRATIVE SERVICES AND STOP-LOSS COVERAGE FOR THE CITY'S GROUP HEALTH BENEFITS PROGRAM

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with "The Pheil Company" for administration of group medical claims and provision of specific and individual stop-loss coverage.

Since 1983 when the City first began self-funding its group benefits it has contracted with several third party administrators (TPA's) for administration of its claims and with various stop-loss reinsurers for its stop-loss needs.

The current hardening of global reinsurance markets necessitated the City securing competitive proposals this year prior to its January 1st renewal date. A very responsible and competitive proposal has been received from PAI, Inc., d/b/a The Pheil Company. This proposal as received will reduce the City's fixed costs for its program by $272,000 in the coming year. In addition to their proposal they have also committed to opening an Asheville claims office within the first quarter of the coming year. The City has never had a local TPA capacity to service its claims needs.

City staff recommends City Council adopt a resolution authorizing the City Manager to enter into an agreement with "The Pheil Company" for administration of group medical claims and provision of specific and individual stop-loss coverage.

RESOLUTION BOOK NO. 26 – PAGE 242

L. RESOLUTION NO. 00-234 - RESOLUTION MODIFYING SCHEDULED CITY COUNCIL MEETINGS TO INCLUDE A COMMUNITY MEETING ON TUESDAY, JANUARY 30, 2001, BEGINNING AT 7:00 P.M. IN THE MUNICIPAL BUILDING COMMUNITY ROOM LOCATED AT 100 COURT PLAZA, ASHEVILLE, NORTH CAROLINA

RESOLUTION BOOK NO. 26 – PAGE 243

M. RESOLUTION NO. 00-235 - RESOLUTION AUTHORIZING LEASE OF CITY-OWNED PROPERTY AT 43 WALL STREET

Summary: The consideration of a resolution authorizing the City to enter into a lease for its building located at 43 Wall Street, adjacent to the parking deck.

The City owns property on the north side of Wall Street that was redeveloped in the 1980's through the use of Certificates of Participation (COPs). The City leased the property to a development corporation, which constructed the deck and some attached commercial space on the Wall Street elevation. The development corporation leased the property back to the City, and the City subleased it to the Wall Street Limited Partnership, which subleased part of the commercial space to ClimbMax in 1995. The City entered into an agreement directly with ClimbMax for the construction and use of the climbing wall on the outside of the building in 1995. These leases expired in August of 1999, and ClimbMax has continued to lease directly from the City on a monthly basis. ClimbMax desires now to enter into a lease for a period of years for the part of the building that they currently occupy, and the climbing wall.

The basic terms are that ClimbMax will lease the property for an initial term of 4-1/2 years, with an option to renew for up to five additional years. ClimbMax will pay the City a monthly rental of $1,100.00, subject to annual escalation after the first 18 months. The current rental is $900.00. Although the rental market in the downtown area might support a higher rent, the space occupied by ClimbMax is essentially unfinished, and we are limited by law as to how much "private use" income we can realize from the (non-taxable) COPs-financed structure, and $1,100 is approaching the top of that range.

Currently, the space occupied by ClimbMax is without a functioning HVAC system. Due to the unique configuration of the space used by ClimbMax, the parties propose that ClimbMax should arrange for HVAC to meet its needs, and the amount of rent reflects this. ClimbMax proposes to use natural gas heat, and a supply line for this purpose needs to be built from the Wall Street main to the building. Since the City will receive a permanent benefit from this work (estimated at $2,500.00) we are recommending that ClimbMax arrange and pay for the gas line installation, and that their first year's rent obligation be reduced by that cost.

If Council approves of the proposed lease arrangement, adoption of the resolution is recommended.

City Attorney Oast reiterated that the above information indicates that the lease term (including options) is being requested for 9-1/2 years. However, Certificates of Participation (CO) on the Wall Street parking deck, of which this building is part, will be retired in February 2008, which means that the percentage cap on private activity income will no longer be applicable, and the City may thereafter seek a market rental for the property. Accordingly, the City is modifying the length of the option from the current 5 years to 2-1/2 years or 30 months, so that the lease and any extensions will expire on January 31, 2008, when the CO's are retired. The tenant and his attorney are agreeable.

RESOLUTION BOOK NO. 26 – PAGE 244

N. MOTION SETTING A PUBLIC HEARING ON JANUARY 9, 2001, TO REZONE ONE LOT ON FAIRFAX AVENUE AND WELLS AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT

O. MOTION SETTING A PUBLIC HEARING ON JANUARY 9, 2001, TO REZONE ONE LOT ON HILLSIDE AND SEMINOLE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT

P. MOTION SETTING A PUBLIC HEARING ON JANUARY 9, 2001, TO REZONE 475 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Q. MOTION SETTING A PUBLIC HEARING ON JANUARY 9, 2001, TO APPLY THE MANUFACTURED HOME OVERLAY ZONING CLASSIFICATION ON TWO LOTS ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT LOCATED ON POWERS ROAD

R. MOTION SETTING A PUBLIC HEARING ON JANUARY 9, 2001, TO AMEND THE FISCAL YEAR 2000 CONSOLIDATED PLAN TO REALLOCATE $125,000 IN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM NEIGHBORHOOD HOUSING SERVICES PROPOSED SYCAMORE HOLLOW HOUSING DEVELOPMENT ON BRADLEY ROAD IN WEST ASHEVILLE TO NEIGHBORHOOD HOUSING SERVICES NEW APARTMENTS DEVELOPMENT IN MONTFORD AND MIDTOWN

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PERMITTED HEIGHT FOR FENCES

ORDINANCE NO. 2776 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE PERMITTED HEIGHT FOR FENCES

Mayor Sitnick opened the public hearing at 5:14 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to revise the permitted height for fences. This public hearing was advertised on December 8 and December 15, 2000.

The proposed ordinance amendment would revise the maximum height permitted for fences located in the side and rear setbacks. Currently, fences are limited to a maximum height of six (6) feet if they are located in the front, side, or rear setbacks. Given the topography of the City, this height is often not adequate to screen adjacent uses and/or to provide privacy to homeowners. The Board of Adjustment has received several requests for variances from the fence height standard and the Planning and Development staff has received requests for the ordinance amendment being proposed. A maximum height of eight (8) feet for fences located in the side and rear setbacks is established by the draft ordinance amendment, with the maximum height remaining at six (6) feet for fences located in the front setback. In addition, the proposed ordinance would prohibit the blocking of the sight visibility triangle, located at street intersections, by fences. The proposed ordinance amendment would address the issues raised by the variance requests and would meet the needs of those requesting the ordinance amendment.

At their October 4, 2000, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the maximum height for fences. The Planning and Development staff recommends approval of the wording amendment.

Mayor Sitnick closed the public hearing at 5:15 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2776. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 47

B. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS FOR ON-PREMISE SIGNS

ORDINANCE NO. 2777 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE TO REVISE THE STANDARDS FOR ON-PREMISE SIGNS

Mayor Sitnick opened the public hearing at 5:15 p.m.

Chief Planner Gerald Green said that this is the consideration of an amend to the Unified Development Ordinance (UDO) to revise the standards for on-premises signs. This public hearing was advertised on December 8 and December 15, 2000.

The proposed ordinance amendment would revise the City's sign ordinance to make it easier for staff and the public to use. The proposed amendment represents the first comprehensive revisions to the sign regulations since their adoption over ten years ago. The proposed amendment would revise the standards for on-premises signs only; the standards for off-premises signs would remain unchanged. Revised standards for single tenant and multi-tenant signage are proposed, as well as changes to some miscellaneous standards. The proposed changes include:

Single tenant signage
- Reformat the section in the same style as the multi-tenant signage regulations;
- Permit suspended/transom signs;
- Permit maximum square footage for attached signage to be distributed between 2 signs;
- If variance granted by Board of Adjustment to permit sign larger than 125 sq ft, setback would be 15 ft instead of 10 ft;
- Commercial subdivisions permitted identification sign like residential subdivisions.

Multi-tenant signage
- Eliminated the standard that based attached tenant signage on the type of freestanding sign; tenants now permitted one square feet of attached signage for each one linear foot of building frontage (with max size identified);
- Increased maximum square footage from 187.5 to 200;
- Setback based on sign size. Signs over 125 square feet have 15 feet setback; signs under 125 square feet have 10 feet setback;
- Businesses sharing an entrance can have wall signs;
- Subtenants within a leased area can each have a small wall sign.

Miscellaneous

- Method of calculating sign size simplified;
- Flags of nations, states, etc. are exempt; other flags added to list of prohibited signs;
- Modified section dealing with signs on vehicles to make it easier to enforce;
- Altered section dealing with directional signage; and
- Added signage to the list of design elements an authorized design board can vary.

The input and ideas of sign contractors and businesses was used in the development of the proposed revisions. The adoption of the proposed ordinance amendment will improve the ability of the staff to administer the sign regulations while providing additional flexibility to business owners in advertising their businesses.

At their October 4, 2000, meeting, the Planning and Zoning Commission voted 7 to 0 to recommend approval of the wording amendment revising the standards for signs. The Planning and Development staff recommends approval of the wording amendment.

Mayor Sitnick closed the public hearing at 5:17 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2777. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 49

IV. UNFINISHED BUSINESS:

A. ORDINANCE DENYING THE CONDITIONAL USE PERMIT TO CONSTRUCT A WAL-MART SUPERCENTER AT THE INTERSECTION OF GERBER ROAD AND HENDERSONVILLE ROAD

Planning and Development Director Scott Shuford said that the City has received letters from both the property owner and Wal-Mart Stores formally withdrawing their request for a conditional use permit for the Gerber site. This is consistent with recent media reports indicating abandonment of the project. This withdrawal will eliminate the need for City Council to take action on the order denying the conditional use permit.

Please be aware that this withdrawal prior to final Council action has the effect of preserving the applicant's ability to resubmit a substantially similar request without waiting the one-year period called for in our ordinance for a denied conditional use permit. He was not aware of any inclination on the part of the applicants to resubmit, but did want City Council to be apprised of the possibility.

V. NEW BUSINESS:

A. RESOLUTION NO. 00-236 - RESOLUTION APPOINTING A MEMBER TO THE ASHEVILLE FILM BOARD

Vice-Mayor Cloninger said that Barbara Pasternack has resigned as a member of the Asheville Film Board, thus leaving an unexpired term until November 1, 2001.

Upon recommendation of the Asheville Film Board, on December 12, 2000, City Council instructed the City Clerk to prepare the proper paperwork to appoint Diana Bilbrey to fill the unexpired term of Ms. Pasternack.

Councilman Worley moved to appoint Diana Bilbrey to the Asheville Film Board to fill the unexpired term of Ms. Pasternack, term to expire November 1, 2001, or until her successor is appointed. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 248

VI. OTHER BUSINESS:

RESOLUTION NO. 00-237 – RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH HEERY INTERNATIONAL FOR AN ARCHITECTURAL FEASIBILITY STUDY OF THE CIVIC CENTER

ORDINANCE NO. 2778 – BUDGET AMENDMENT FOR THE CIVIC CENTER ARCHITECTURAL FEASIBILITY STUDY

Councilman Hay said that in September 2000, City Council authorized City staff to prepare a request for proposals for an architectural feasibility study of the Civic Center. This architectural study will examine four functions of the existing Civic Center (performing arts center, conference center, exhibition space and arena). The architectural study will analyze the existing Civic Center with a focus on the structural ability to renovate the existing facility or parts thereof and/or to enlarge the existing facility to provide the amenities normally found in today's market for sports arenas of a size between 7,500 seats and 9,000 seats, conference centers (including the ability to serve small conventions) trade shows (exhibition space) and the performing arts.

In addition, the architectural study will preliminarily review other sites, including two sites for possible use as an arena in the event there are site or economic constraints in providing an arena at the existing Civic Center.

On October 9, 2000, the City received six proposals. A sub-committee of the Civic Center Task Force narrowed the proposals to three. Interviews with the three finalist were held on November 30, 2000, noting that each firm was somewhat different from the other. The three finalist were Heery International Inc., KPS Group and Ellerbe Becket. Following the interviews, the Civic Center Task Force recommended that Heery International, Inc. be selected for the project. They were presently engaged in doing projects similar to this in other parts of the country and were up-to-date in the sports and entertainment industry.

Councilman Worley and Councilwoman Field also spoke in support of Heery International.

City Engineer Cathy Ball explained the thorough job the Task Force performed in this process and that staff did follow up on their references to make sure they were recommending a qualified firm. She said that City staff recommends the City Manager be authorized to sign a contract with Heery International, Inc. in an amount not to exceed $98,400 plus reimbursable expenses for an architectural feasibility study of the Civic Center. Staff also requests Council approve a budget amendment in the amount of $110,000 for the contract. (This amount includes that cost of the contract plus 10% reimbursable expenses.)

Discussion surrounded the amount of the contract; the number of hours proposed by the architectural firm to complete the study; where the $110,000 for the study would come from; how much of the contract cost is going toward analyzing the other sites; what kind of questions will the report answer, i.e., is the facility structurally suited to be renovated to be a first class modern facility with all the amenities that are expected of a first class facility; and alternative funding sources other than property taxes.

Vice-Mayor Cloninger's strong preference and major emphasis was to try to renovate the existing Civic Center.

Councilman Peterson wanted to make sure that the report includes cost estimates because even though Asheville would like to have a first class center, the City taxpayers may not be able to afford it. Mayor Sitnick said the study would include that information. In addition, substantive discussions have been those alternative funding sources that City taxpayers are going to have to get help with. Since over 80% of the people who use the facility come from outside the City of Asheville, it is Council's responsibility to get some kind of pay-equity and they are looking at that very seriously.

City Manager Westbrook said that the charge from City Council was whatever needs to be done to the Civic Center to bring it up-to-date needs to be done with something other than property tax dollars. He said there will have to be an alternate funding source to fund the debt service to do this.

Mr. Fred English, 17 Presley Road, suggested closing the existing Civic Center down and building a new arena. He felt the City should not put anymore money into the existing Civic Center.

Mr. Kevin Rollins, representing the Libertarian Party of Buncombe County, felt that City Council should hold a public hearing on this issue before spending $110,000. Mayor Sitnick noted that this is not a new issue and there has been a lot of public comment, community meetings, public surveys, etc. to get to this point.

Upon inquiry of Vice-Mayor Cloninger, City Engineer Ball said that the report is to be finalized in 90 days.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and ordinance and they would not be read.

Councilman Hay moved to adopt Resolution No. 00-237. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 250

Councilman Hay moved to adopt Ordinance No. 2778. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 58

COMMENTS BY FRED ENGLISH

Mr. Fred English made several comments, some being, but are not limited to: he hoped City Council would not consider a resolution supporting a moratorium on the death penalty; the Salvation Army should not have had to pay any parking fees; and he felt City Council should have approved the proposed Super Wal-Mart on Gerber Road.

MORATORIUM ON THE DEATH PENALTY

Vice-Mayor Cloninger suggested City Council consider, as an alternative to the full Council voting on a resolution in support of a moratorium on the death penalty, that if City Council members want to express an opinion on this issue that they communicate their opinions individually, as Council members, by writing a letter to whomever they want. He felt this is not an issue for City Council and is not the kind of issue they were elected to take up. He hated to see City Council go down this road of taking up social issues.

Councilwoman Bellamy said that City Council is being asked to consider the possibility of a moratorium on the death penalty, not for City Council as a whole to decide on whether we need to have the death penalty or not. She felt it was important for City Council to address this issue, because we are on a local level and we have the ability to affect the state level on this decision. She said that with the moratorium, we are asking them to reassess and reevaluate their current system – not asking them to abolish it or to continue it. But if they are going to continue it, to look at it and see if it is being fair in determining who dies and who lives. She felt City Council should vote formally as a whole Council.

CLAIMS

The following claims were received by the City of Asheville during the period of November 17-30, 2000: Terminix (Sanitation), Samatha Emory (Sanitation), Frank Shepherd (Water) and Affordable Comfort (Sanitation).

The following claims were received by the City during the period of December 1-14, 2000: Ron Dame (Finance), Vadim Boraev (Finance), Carla William (Water), Richard Plemmons (Water), Choe Thompson (Water), Harry Fields (Streets), Daniel Boone Auto (Streets), Michelle Eldridge (Water), Donna Link (Water), Rev. Joe Chandler (Water), T.H. Plemmons (Water), Rebecca Wilson (Water), Idris Rasheed (Water), James Quinn (Transit Services), Deshondra Kemp (Streets) and Angela Bell (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:15 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – January 9, 2001 - 5:00 p.m.

Regular Meeting

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

INVOCATION

Mayor Sitnick gave the invocation.

ADDITIONS TO THE AGENDA

City Manager Westbrook requested to be added under "Other Business" two meetings requests from the Buncombe County Board of Commissioners.

Mayor Sitnick proudly recognized Community Development Director Charlotte Caplan for receiving the Best Practices Award for the Consolidated Strategic Housing and Community Development Plan.

I. PROCLAMATIONS:

II. CONSENT:

City Attorney Oast passed out a revised version of Consent Agenda Items F and G. He said the revised versions contain some minor clarifying changes made at the suggestion of the City's bond counsel. Approval of the Consent Agenda should include the revised documents.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON DECEMBER 19, 2000

B. MOTION SETTING A PUBLIC HEARING ON JANUARY 23, 2001, TO INITIALLY ZONE 15 LOTS KNOWN AS BURNSIDE, PHASE 3 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

C. MOTION SETTING A PUBLIC HEARING ON JANUARY 23, 2001, TO INITIALLY ZONE 5 LOTS KNOWN AS BRAESIDE, SECTION 5 OF BILTMORE PARK TO RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT

D. MOTION SETTING A PUBLIC HEARING ON JANUARY 23, 2001, TO INITIALLY ZONE 24 LOTS KNOWN AS OAKBROOK, PHASE 1 OF BILTMORE PARK TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

E. MOTION SETTING A PUBLIC HEARING ON JANUARY 23, 2001, TO REZONE A PORTION OF PROPERTY LOCATED ON LEICESTER HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT SO THAT ALL OF THAT LOT IS ZONED COMMUNITY BUSINESS II DISTRICT

94

F. RESOLUTION NO. 01-01 – RESOLUTION AUTHORIZING THE APPROVAL, EXECUTION AND DELIVERY OF VARIOUS DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF CITY OF ASHEVILLE, N.C., WATER SYSTEM REVENUE BONDS, SERIES 2001; PROVIDING FOR THE SALE OF THE BONDS; SETTING FORTH THE TERMS AND CONDITIONS UPON WHICH THE BONDS ARE TO BE ISSUED; AND PROVIDING FOR CERTAIN OTHER MATTERS IN CONNECTION WITH THE ISSUANCE, SALE AND DELIVERY OF THE BONDS

Summary: The consideration of a resolution authorizing the approval, execution and delivery of various documents in connection with the issuance of City of Asheville Water Revenue Bonds, Series 2001; providing for sale of the bonds and setting the terms and conditions upon which the bonds are to be issued.

City Council has previously adopted a resolution directing that actions be initiated to enable the issuance of Water Revenue Bonds; to include making application to the Local Government Commission for approval to issue bonds, retaining Bond Counsel, underwriters, feasibility consultants; etc.

The resolution provides the following: (1) Approves the issuance of bonds in a principal amount not to exceed $13,400,000; (2) Approves, confirms and incorporates by reference the provisions of the General Indenture and Series Indenture; (3) Stipulates that the bonds shall be special obligations of the City and that principal and interest shall NOT be payable from the general funds of the City; (4) Authorizes and directs the Mayor, City Manager, City Clerk and Finance Director to execute and deliver the Series Indenture and do all things necessary to issuance of the bonds and to carry out and comply with the Series Indenture; (5) Approves the form and content of the Purchase Contract and stipulates that the bonds will be sold to the underwriters pursuant to the terms of the Purchase Contract; and (6) Authorizes and approves the form and content of the Preliminary Official Statement and Official Statement (to be dated on or about February 1, 2001) and their use by the underwriters in the sale of the bonds.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 26 – PAGE 251

G. RESOLUTION NO. 01-02 – RESOLUTION ADOPTING BOND ORDER AUTHORIZING THE ISSUANCE OF NOT TO EXCEED $13,400,000 WATER SYSTEM REVENUE BONDS OF THE CITY OF ASHEVILLE, N.C.

Summary: The consideration of a resolution adopting the Bond Order Authorizing the Issuance of Not to Exceed $13,400,000 Water System Revenue Bonds of the City of Asheville, North Carolina.

City Council has previously adopted a resolution directing that actions be initiated to enable the issuance of Water Revenue Bonds.

The Bond Order provides for the following: (1) In order to finance improvements to the water system, the bonds are authorized by City Council and shall be issued pursuant to North Carolina General Statutes, Section 159-80, "The State and Local Government Revenue Bond Act; (2) The principal amount shall not exceed $13,400,000; (3) The bonds shall be special obligations of the City secured and paid solely from the revenues from the operation of the water system; NOT from the general funds, credit or taxing powers of the City; (4) Deposit of the proceeds from the sale of the bonds in accordance with the Series Indenture; and (5) The Bond Order will be effective upon adoption.

City staff recommends City Council adopt the resolution.

RESOLUTION BOOK NO. 26 – PAGE 255

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Field and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE ONE LOT ON FAIRFAX AVENUE AND WELLS AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT

ORDINANCE NO. 2779 - ORDINANCE TO REZONE ONE LOT ON FAIRFAX AVENUE AND WELLS AVENUE FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO CENTRAL BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:08 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone property at the corner of Wells Avenue and Fairfax Avenue from RM-8 Residential Multi-Family Medium Density District to Central Business District. This public hearing was advertised on December 29, 2000, and January 5, 2001.

The owners of property, Grace Baptist Church, are requesting the rezoning of the property (remaining portion of lot 9638.13-14-9292) from RM-8 Residential Multi-Family Medium Density District to Central Business District.

The church is requesting that their split-zoned lot on Haywood Road be zoned the same classification to permit them the opportunity to expand their facility. While the RM-8 zoning has setback and parking requirements that would require any expansion to be out of character with adjacent development, the Central Business District zoning preserves the intent to build structures close to the street without imposing off-street parking requirements. The rezoning will be consistent with the recommendations in the Haywood Road Plan in preserving the historic character of the surrounding area.

At the Planning and Zoning Commission meeting, there were no objections from the public to permit the rezoning of the church property north of Wells Avenue.

The Planning and Zoning Department staff recommends approval of the rezoning request. The Planning and Zoning Commission reviewed this rezoning request at their December 6, 2000, meeting. The Commission voted unanimously to recommend approval of the rezoning of property at the corner of Wells Avenue and Fairfax Avenue from RM-8 Residential Multi-Family Medium Density District to Central Business District.

Mayor Sitnick closed the public hearing at 5:11 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2779. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 60

B. PUBLIC HEARING TO REZONE ONE LOT ON HILLSIDE AND SEMINOLE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT

ORDINANCE NO. 2780 - ORDINANCE TO REZONE ONE LOT ON HILLSIDE AND SEMINOLE STREET FROM RM-8 RESIDENTIAL MULTI-FAMILY MEDIUM DENSITY DISTRICT TO OFFICE BUSINESS DISTRICT

Mayor Sitnick opened the public hearing at 5:12 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone one lot on Seminole Street from RM-8 Residential Multi-Family Medium Density District to Office Business District. This public hearing was advertised on December 29, 2000, and January 5, 2001.

The owner of property, George Morasani, is requesting the rezoning of the property located on Seminole Street (PIN No. 9657.17-00-0184) from RM-8 Residential Multi-Family Medium Density District to Office Business District.

The owner of the property wishes to expand his commercial / office facility further into the adjacent neighborhood. This one lot is part of a transition area between residential, commercial and institutional uses. The lot across the street is commercially zoned but contains an office building. This area should remain an office transition area to prohibit higher impact uses on this dead end street.

At the Planning and Zoning Commission meeting, there were no public comments to this rezoning request.

The Planning and Zoning Commission reviewed this rezoning request at their December 6, 2000, meeting. The Commission voted unanimously to recommend approval to rezone the one lot on Seminole Street from RM-8 Residential Multi-Family Medium Density District to Office Business District. The petitioner stated that he was in agreement with the Planning & Zoning Commission recommendation.

Upon inquiry of Mayor Sitnick, Mr. Morasani said that he would be willing to circulate a petition to change the name of Hillside to avoid confusion with the other Hillside Street in Asheville.

Mayor Sitnick closed the public hearing at 5:16 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2780. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 62

C. PUBLIC HEARING TO REZONE 475 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

ORDINANCE NO. 2781 - ORDINANCE TO REZONE 475 MERRIMON AVENUE FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT TO COMMUNITY BUSINESS I DISTRICT

Mayor Sitnick opened the public hearing at 5:16 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone two lots at 475 Merrimon Avenue from RS-8 Residential Single-Family High Density District to Community Business I District. This public hearing was advertised on December 29, 2000, and January 5, 2001.

The owners of property, Wachovia Bank -Trustee for Verne & William Rhoades, are requesting the rezoning of the property (PIN No. 9649.06-37-6455 and 6547) from RS-8 Residential Single-Family High Density District to Community Business I District.

Prior to the adoption of the Unified Development Ordinance, these two parcels of land were zoned commercial. The property owners are requesting this rezoning to permit the land to be developed for its highest and best use. The owners of these properties that front on Merrimon Avenue also wish to donate the lots to the City of Asheville.

At the Planning and Zoning Commission meeting, there were several public comments concerning additional traffic impacts on the already busy intersection at WT Weaver Boulevard.

The Planning and Development staff recommends approval of the rezoning request. The Planning and Zoning Commission reviewed this rezoning request at their December 6, 2000, meeting. The Commission voted unanimously to recommend approval of the rezoning of property at 475 Merrimon Avenue from RS-8 Residential Single-Family High Density District to Community Business I District.

Mayor Sitnick said that this now City-owned property will be used as an extension to Weaver Park.

Mr. David Gory expressed his displeasure with the whole concept of zoning.

Mayor Sitnick closed the public hearing at 5:21 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2781. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 - PAGE 64

D. PUBLIC HEARING TO APPLY THE MANUFACTURED HOME OVERLAY ZONING CLASSIFICATION ON TWO LOTS ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT LOCATED ON POWERS ROAD

ORDINANCE NO. 2782 - ORDINANCE TO APPLY THE MANUFACTURED HOME OVERLAY ZONING CLASSIFICATION ON TWO LOTS ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT LOCATED ON POWERS ROAD

Mayor Sitnick opened the public hearing at 5:24 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to apply the Manufactured Home Overlay zoning classification to two lots zoned RM-6 Residential Multi-Family Low Density District located on Powers Road. This public hearing was advertised on December 29, 2000, and January 5, 2001.

The owner of property, Jeff Bowlin, is requesting the application of the Manufactured Home Overlay zoning classification to two lots currently zoned RM-6 Residential Multi-Family Low Density District (PIN Nos. 9629.08-99-8371and 9639.05-09-0659) located on Powers Road.

These two lots are adjacent to the existing Manufactured Housing Overlay District along Gorman Bridge Road and Riverview Church Road (Adams Hill Road). The 2010 Plan shows the majority of this area to be low density residential. One of the two lots currently has manufactured homes. The other will be subdivided and developed for manufactured homes. These lots are at the end of the City's jurisdiction and surrounded by a number of manufactured homes both within and outside of the City's zoning jurisdiction.

The petitioner has been made aware that there are development standards in the Unified Development Ordinance for the placement of manufactured homes on individual lots and also has been informed of the subdivision regulations.

At the Planning and Zoning Commission meeting, there were no public comments to this rezoning request.

The Planning and Development staff recommend approval of this application. The Planning and Zoning Commission reviewed this rezoning request at their December 6, 2000, meeting. The Commission voted unanimously to apply the Manufactured Home Overlay zoning classification to two lots on Powers Road currently zoned RM-6 Residential Multi-Family Low Density District.

Mayor Sitnick closed the public hearing at 5:25 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2782. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 66

E. **PUBLIC HEARING TO AMEND THE FISCAL YEAR 2000 CONSOLIDATED ACTION PLAN TO REALLOCATE $125,000 IN COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FROM NEIGHBORHOOD HOUSING SERVICES PROPOSED SYCAMORE HOLLOW HOUSING DEVELOPMENT ON BRADLEY ROAD IN WEST ASHEVILLE TO NEIGHBORHOOD HOUSING SERVICES NEW APARTMENTS DEVELOPMENT IN MONTFORD AND MIDTOWN**

RESOLUTION NO. 01-03 - RESOLUTION TO AMEND THE FISCAL YEAR 2000 CONSOLIDATED ACTION PLAN

Due to a conflict of interest, Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Sitnick opened the public hearing at 5:27 p.m.

Community Development Director Charlotte Caplan said that this is the consideration of a resolution approving amendments to the Consolidated Action Plans for the HOME and Community Development Block Grant programs for Fiscal Year 2000. This public hearing was advertised on December 29, 2000.

The City's Consolidated Annual Action Plan allocates our entitlement of Community Development Block Grant (CDBG) and HOME funds to specific projects. From time to time, amendments are needed to deal with cancelled projects, cost over-runs, new urgent projects, or differences between actual and estimated program income. Council recently approved such amendments on November 28, 2000, (various CDBG and HOME re-allocations) and December 12, 2000, (CDBG emergency relocation funding).

Neighborhood Housing Services (NHS) has now requested one further amendment. Originally, $150,000 in CDBG funding was allocated to NHS's Sycamore Hollow project, a planned mixed home-ownership and rental development on Bradley Road in West Asheville. However, due to cost over-runs on its scattered site apartment project on Montford Avenue and Broad Street, NHS needs to re-allocate $125,000 of Sycamore Hollow funding to the apartments project.

Staff have reviewed this request and the revised financial plan submitted by NHS for the apartment project, and are satisfied that this re-allocation, added to the $125,148 in CDBG funds already committed to the project, will enable NHS to close out the construction of these 16 apartments. The start of the Sycamore Hollow development will be delayed until NHS has identified sufficient financing.

City staff recommends approval of the amendments.

Mayor Sitnick closed the public hearing at 5:28 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 01-03. This motion was seconded by Councilman Peterson and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 258

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 01-04 - RESOLUTION SUPPORTING A MORATORIUM ON THE DEATH PENALTY

Mayor Sitnick said that a number of weeks ago City Council was approached by a group who wanted City Council to consider the matter of Council supporting a moratorium on the death penalty until the justice system can be reviewed, debated and improved. There were enough people on City Council who were interested in hearing about this issue so at the City Council worksession on December 12, 2000, City Council had a presentation from the WNC Chapter of People of Faith Against the Death Penalty. We asked the People of Faith Against the Death Penalty to provide City Council with additional information which they have done. City Council, at that time, had a preliminary discussion about their consideration of this resolution and decided to take it up on this agenda for formal discussion. She explained that City Council has a policy that anytime requests are made to our legislative delegation, that the request has to be unanimous or it is not forwarded to Raleigh. Basically our legislators don't like to consider requests that are not unanimous from Council. They have far more to deal with than we do and it's very difficult for delegation to represent local government entities unless they know everyone is on board, irregardless of the subject matter. It is her sense that we don't have unanimity on Council at this time. However, she felt that there is unanimity on the part of City Council regarding the importance of this issue and the need for us to express our opinions to our representatives in Raleigh.

Mayor Sitnick then explained that the request to City Council was to consider a moratorium on the death penalty, not to consider an abolition to the death penalty. It was brought to Council's attention at the worksession that there is inequity in the system. This is about whether or not the system applied to death penalty cases is applied fairly to all and whether or not people are represented equally. Local and national groups have been informed that since the advent of the DNA technology, approximately 80 people have been released from death row because they have been proven innocent. She didn't believe there is anybody, victims of violent crime, families of victims of violent crime, people opposed to the death penalty, or people for the moratorium who would disagree on one thing – and that is, no innocent people should suffer either at the hands of an inadequate justice system or at the hands of a crazed criminal. That is why this has been such a profound subject for City Council to hear about. She then asked Council how they would like to proceed.

Councilman Peterson pointed out that there is distinction between the resolution and City Council's usual actions on legislative matters. City Council's usual action is on a particular bill that addresses some direct benefit to the City or directs state law that governs some sort of City action. This is not directed to a particular piece of legislation, but is more showing support of an idea. Because of this, he felt Council's general rule about not taking action on legislative requests unless it's unanimous, would not apply in this situation. Therefore, he felt it would be proper for City Council to continue with the request for a resolution supporting a moratorium on the death penalty.

Councilwoman Bellamy agreed with Councilman Peterson.

Councilwoman Field asked that if City Council moves forward with this request, she would like to request that whatever the vote is that the resolution indicate that vote so the legislators don't get the impression that it was a unanimous vote.

Mayor Sitnick stated that City Council has received a letter supporting the moratorium signed by 34 local religious leaders and also a letter supporting the moratorium signed by 31 local attorneys.

The following individuals spoke in support of the moratorium on the death penalty for the following reasons, some being, but are not limited to: the current system is unfair; the system sentences to death mentally retarded individuals and those who are juveniles at the time of the offense; issues of inaccuracy; 17 groups in Asheville alone have adopted moratorium statements;

2,000 individuals in our community have signed a petition supporting a moratorium; broad base of support on this issue; survey by the Charlotte Observer showed 62% of Carolinians support a moratorium on executions; 10 municipalities in North Carolina and 21,000 citizens have signed petitions supporting a moratorium on executions; the death penalty encourages darkness, violence and resentment; racial bias is so evident and stark when the death penalty is handed down; people can't afford good representation and end up on death row; innocent people die; there is a long, lengthy, costly appeal process; system as it exists now is flawed and broken; we are executing our minority citizens; studies show that one in seven on death row is innocent; inhuman form of punishment; death penalty is immoral, unjust, disproportionally allocated and inhumane; poor people and people of color are more likely to get a death sentence; the criminal justice system can learn from a review of their process; the government should not have the right to execute it's own citizens; City Council should take a stand on this because the Police Department begins the investigation and it's City Council who oversees that department and its budget; we don't have a system now that captures only the guilty and allows the innocent to go free; and nothing is more demoralizing to a victim's family than to realize a mistake has been made and not only has an innocent person been put to death, but the real killer is free to walk the streets:

Noel Nickel, Co-Chair of the WNC Chapter of People of Faith Against the Death Penalty
Carol Dreling, survivor of a double murder and survivor of 7 bullet wounds
Helen Hill, member of the WNC Chapter of People of Faith Against the Death Penalty
Bob McPherson
Catherine Smith, mother of a person on death row
Daniel Breen
Kevin Rollins, representative of the Libertarian Party of Buncombe County
Frank Goldsmith, attorney

The following individuals spoke in opposition to City Council supporting a moratorium on the death penalty for the following reasons, some being, but are not limited to: City Council members should express their opinions individually, not as a group, because they should not interfere in state laws; the laws of the State of North Carolina should be supported and the Constitution of this State should be defended; the death penalty is a state law; the Constitution establishes a system of government that provides a forum for these people and all people of faith to address a state law that they do not agree with – and that forum is in Raleigh; and adoption of a resolution supporting the moratorium in the death penalty makes a mockery of our constitutional system and of our laws:

Fred English, resident of Haw Creek
Kate Dreher, Asheville citizen, taxpayer and citizen of faith

Mayor Sitnick said that whether or not Council supports the moratorium unanimously or in part, she asked that if individual Council members consider expressing their opinions to Raleigh that they at least strongly call for a review of the system so that the families of victims are properly served by having the right person punished.

Councilman Hay refuted comments made in the newspaper today from District Attorney Ron Moore related to him and his law practice. The statements were inaccurate. The paper read that the District Attorney's suggested that Councilman Hay would be influenced at this meeting in some fashion by pecuniary interest and if that wasn't so absurd, he might take it personally. That is just not true. The DA's statement, in his opinion, doesn't constitute the kind of responsible comment that we expect from public officials when sincere people are dealing with issues as serious as the sanctity of human life – it is quite frankly, he thinks, the kind of behavior which adds credence to the arguments by those who say that the system is driven more by personal bias than by seeking justice.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Bellamy moved for the adoption of a resolution supporting a moratorium on the death penalty. This motion was seconded by Councilman Peterson.

Vice-Mayor Cloninger said that he will vote against the resolution for reasons expressed in the past. He very much respects the opinions on both sides of this issue. It is a very important issue to society. But he does feel strongly that this is an issue that should be debated by the N.C. legislature and not by this city council. This is not a city issue, despite what has been said. City Council does not have any control over the imposition of the death penalty. A major concern about City Council taking up this issue has to do with precedent. As important as this issue is, there are many other social issues today that many other people feel just as strongly about. He does not want to set up a situation where we have group after group coming to this city council asking us to take action when it involves an issue that we have no authority to do anything about - issues like abortion, like legalization of drugs, euthanasia, etc. He felt City Council was elected to do the business of the City (street paving, building parks, greenways, etc.) and he feels Council should stick to those issues and not consider topics such as this one.

Councilman Worley said that the arguments in support of a moratorium are compelling, as are the personal stories. He suspected there is a need for a moratorium, but he agrees with Vice-Mayor Cloninger that it is not an issue for this city council to take up. He totally agrees that we don't need to take an official city position on social issues that we don't have any control over. He thought that he could personally support a moratorium on the death penalty and he may very well end up doing that. But his heart says the City Council should not take an official position – that's the legislature. He would be in support of a resolution that calls upon the citizens of Asheville to become educated and to let the members of the General Assemble know their views. It is an important issue and the General Assembly does need to hear our views, but it needs to come from us as citizens where each member of the community can represent their own views and not from the City Council attempting to read the majority views of the citizens of the City of Asheville in an area where we have no authority to deal with it.

Councilman Peterson disagreed with Councilman Worley and Vice-Mayor Cloninger in that he felt the City does have a responsibility because they have a significant role in law enforcement. He felt we have a responsibility to make sure that the judicial system is being fair and accurate. Evidence has repeatedly come to light in the past few years that raises some questions. He personally supports the death penalty because he thinks that in certain cases it is an appropriate response. But, he's uncomfortable that it is not being applied fairly and accurately. Recognizing that the City has very limited financial resources, and we cannot fund all the expensive equipment that our Police Department should have, he felt it would be appropriate to ask the legislature to study that sort of issue of whether or not there are enough resources going into law enforcement. Maybe the legislature will come back and tell us that we need to do more. He felt it would be an appropriate role for the City to support this idea. He encouraged all members of Council to support this moratorium.

Councilman Hay said that he would vote in support of the resolution for a moratorium. In this particular case, we are being asked to follow the lead of other cities in North Carolina. We are also being told by knowledgeable and responsible citizens, who are interested in the issue, that the legislature is going to consider the positions taken by municipal governments in situations like this. In light of those things, he thinks this issue may be presented to us in a different way than some other social issue that is not a city government directed related issue. For those reasons, he did think it was appropriate for City Council to deal with the resolution. He does have experience with the criminal justice system and he does have a sense of how it works – it is not infallible. We count on a system that gives everyone the right to appeal and have their case

103

reviewed to make sure the system works for everyone. The issue before Council is not the death penalty – it is a moratorium to give the Legislative Committee time to study the matter and present their report. This is about justice.

Mayor Sitnick said that she sees this as supporting our state representatives. She believes the support of this resolution does exactly that. This is supporting our legislatures who are already studying the system that we are talking about. She thinks that is totally appropriate for a local government to do. When things are broken, we ask them to be fixed. We are talking about a system that puts people to death. I am personally in favor of the death penalty. She wants to make sure that that justice is applied accurately and appropriately to people who commit heinous crimes. She is hoping that the Legislative Study Committee's findings actually go beyond what they are studying and it promotes a dialogue in this state and across our nation of ways to truly put an end to violence. If there is one person on death row or one person whose is put to death for a crime they did not commit – then that means somewhere on some street in some city, a guilty person goes free. She agrees that if this Study Commission comes up with ways for us to do a more aggressive, stronger, better job and if gives our prosecutors and our local law enforcement officers better tools, then I am for that. She will support the resolution for a moratorium along with the other cities across our state. In addition she supports the Legislative Study Commission and their work to fix this system so that in every single case, 100% of the time, people who are guilty of creating those victims of violent crime are punished appropriately. She asked that if this resolution does not pass, that Council consider unanimously another resolution asking the state to fix the system, whether there is a moratorium or not.

The motion made by Councilwoman Bellamy and seconded by Councilman Peterson passed on a 4-3 vote, with Mayor Sitnick, Councilwoman Bellamy, Councilman Hay and Councilman Peterson voting "yes" and Vice-Mayor Cloninger, Councilwoman Field and Councilman Worley voting "no".

Mayor Sitnick said that pursuant to Councilwoman Field's request, this resolution will be sent to Raleigh as a 4-3 vote. She reiterated that Council's policy on resolutions to our legislators in the past have been required to be unanimous.

When Mayor Sitnick asked Council to consider a resolution that supports the work of the Legislative Study Commission to fix the system, regardless of whether there is a moratorium or not, Vice-Mayor Cloninger said that he would oppose that resolution for the same reason. Again, City Council would be taking up business that he thinks is not City business. We have already bent our rules and adopted a resolution on a simple majority vote.

Mayor Sitnick said that since there will not be a unanimous vote on this, then she suggested to members of Council individually write letters to members of the legislature and members of the Legislative Study Commission to express your opinions.

Councilwoman Field said that she has very strong feelings about the separation of church and state and strong feelings about being petitioned by a group that calls themselves "People of Faith Against" whatever. Secondly, she agreed with Vice-Mayor Cloninger in that is not City Council's purview. Asheville's Charter limits what City Council can and should do and she does not feel that the Charter gives Council the authority to deal with social issues of this kind. She is totally opposed to the death penalty and she will write a very strong letter on her own behalf to the legislators. She feels that everyone can be rehabilitated.

At the suggestion of City Attorney Oast, it was the consensus of Council to have a certified copy of the resolution, along with a certified copy of the minutes reflecting the vote, sent to the legislature.

RESOLUTION BOOK NO. 25 – PAGE 259

At 6:45 p.m., Mayor Sitnick announced a short break.

B. RESOLUTION NO. 00-05 - RESOLUTION APPOINTING A MEMBER TO THE METROPOLITAN SEWERAGE DISTRICT BOARD OF DIRECTORS

Vice-Mayor Cloninger said that Doug Spell has resigned as a member of the Metropolitan Sewerage District Board of Directors, thus leaving an unexpired term.

Councilman Worley moved to appoint City Engineer Cathy Ball as a member of the Metropolitan Sewerage District Board of Directors to fill the unexpired term of Mr. Spell, term to expire January 19, 2003, or until her successor is appointed. This motion was seconded by Mayor Sitnick and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 260

VI. OTHER BUSINESS:

Meetings

City Manager Westbrook said that the Buncombe County Board of Commissioners has invited City Council to meet with them, and other area municipalities, on Saturday, May 19, 2001, at UNC-Asheville. In addition, the Commissioners have asked if City Council would be willing to meet with them in a Joint Meeting on Tuesday, May 29, 2001, at the Asheville Civic Center.

It was the consensus of City Council to instruct the City Manager to work with the County Manager on the times and agendas for these meetings.

Councilman Peterson understood that at the Buncombe County Commissioner's recent retreat, there was a fair amount of discussion concerning the City and he felt it would have been a good idea if someone from City staff would have attended that meeting. He suggested inviting someone from the management level in County government to City Council's upcoming retreat to begin better discussions between the City and the County. Mayor Sitnick noted that our retreat is open to the public and the County would be more than welcome to attend. She asked City Clerk Burleson to obtain a copy of the minutes of the Buncombe County Commissioner's retreat.

Comment by Peter Dawes re: Buncombe County Retreat

Mr. Peter Dawes said that Buncombe County did not have minutes of their retreat, however, he did video tape the entire meeting and would be happy to furnish a copy of that to the City. He did note that the Commissioners made an effort to put a limit on public speaking and commended City Council on their policy regarding public comment.

Comment by David Gory

Mr. David Gory, resident of east Asheville, felt Asheville has adopted a maze of illogical regulations and ordinances over the past years. He felt the Unified Development Ordinance is a prime example of the disaster. He also felt the continued subsidies to the Civic Center is another example of a lack of logic to the system. The local Libertarian Party did a brief review of the City's budget and has proposals to reduce the property tax burden to the citizens of Asheville by 50%. This would be a first step toward the elimination of property taxes. He wondered why the City budget has been allowed to swell and taxes on the citizens been allowed to increase when finding solutions to the financial needs to the City is as simple as looking at the budget. He felt that every City entity as well as every law and ordinance should have a careful review. Citizens should not have to pay for City government in areas it has no business in being in or paying for City government that is not doing it's job. In addition, they should not have to pay for the enforcement of bad laws.

Claims

The following claims were received by the City of Asheville during the period of December 15-28, 2000: BellSouth (Water), Terry Whittington (Police), Britt Kelley (Parks & Recreation), Bill Cogburn (Water), Sherman McKinney (Water), M.W. Curtis (Fire) and Rachel Scott (Streets).

The following claims were received during the period of December 29, 2000 – January 4, 2001: Kelvin Reynolds (Water), Billie Rice (Water), Olene Cutshall (Water), Robert Dowling (Water) and Cindy Bailey (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 7:09 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – January 16, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

BUNCOMBE COUNTY'S PROPOSAL TO LOCATE A SATELLITE JAIL FACILITY AT THE CORNER OF HILLIARD STREET AND SOUTH LEXINGTON AVENUE

At the request of Mayor Sitnick, Councilwoman Field moved to amend the agenda to discuss the issue of Buncombe County's proposal to locate a satellite jail facility at the edge of Asheville's Central Business District at the corner of Hilliard Street and South Lexington Avenue. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Upon inquiry of Councilman Hay, City Attorney Oast said that since he was uncertain of what the discussion would be by Council and since Councilman Hay is a property owner across the street from this site, he felt it would be appropriate to excuse Councilman Hay from participating in this matter. Therefore, Councilman Worley moved to excuse Councilman Hay from participating in this matter due to a conflict of interest. This motion was seconded by Councilwoman Bellamy and carried unanimously.

Councilwoman Field, member on the Downtown Commission, stated that the Downtown Commission recognizes the need for a facility to accommodate certain parts of the County inmate population, but it also recognized the need for a more comprehensive analysis of the location of the facility. Members are concerned how this use might affect the continued development of downtown. The Downtown Commission voted unanimously, at it's January 12, 2001, meeting to request the County Commissioners postpone the purchase of the property for at least 30 days in order to explore opportunities for a comprehensive approach with County staff, downtown stakeholders, Commission members, and City of Asheville officials and staff.

Mayor Sitnick said that she met with Commissioner Ramsey earlier in the day and while he could not speak for the entire Commission, he felt the Commissioners would probably consider purchasing the property at their meeting that day; however, they may be willing to reconsider the use of that property. He said they would be willing to meet with City staff (perhaps the City Manager and Planning & Development Director) to discuss a different use for that property.

Councilwoman Field was surprised to hear that the County had 25 sites selected with only two in the downtown. She was told that they chose the one in downtown because there was no organized neighborhood opposition to it, and the longer the County waited, the more opposition there would be.

Mayor Sitnick then read a proposed letter from her, on behalf of the City Council, to be hand-carried to the County Commissioners. Said letter acknowledged the Downtown Commission's request that the Board of Commissioners delay their proposal for a short period to allow more discussion and evaluation of alternatives to occur. In addition, the letter read in part "... the Asheville City Council is concerned about the impact of this facility on the continued vitality of the thriving growth corridor between downtown and Mission/St. Joseph's Hospital. While your staff has been working for approximately two years in site selection, this is our first notice about the selection of a particular location. We need some time, preferably at least 30 days, to explore a comprehensive resolution of this problem with County Commission members, the Downtown Commission, downtown stakeholders, and City and County Staff. On behalf of the Asheville City Council, I respectfully request a postponement of action on this item."

Councilman Peterson wondered if the City would be setting a precedent where one local governmental body has to check with the other before proceeding in matters like this. He felt it was appropriate for the City to ask the County for the postponement; however, he felt we should be careful on how much we get involved since it's the County's job to run the jails.

Councilwoman Field moved to suspend the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Vice-Mayor Cloninger moved to authorize the Mayor to send the letter discussed above to the Buncombe County Board of Commissioners, with a note on the bottom from the Mayor thanking Commissioner Ramsey for the County's willingness to consider Asheville's concerns and hoping that a common solution can be found. This motion was seconded by Councilwoman Field and carried unanimously.

CONSENT:

Mayor Sitnick said that the grant application to assist with the development of the Skateboard Park has been pulled from the Agenda.

Budget Amendment to the 29 Water Bond Capital Improvements Fund

Summary: The consideration of a budget amendment to the 29 Water Bond Capital Improvements Fund to reflect an increase in the sale of revenue bonds from $12 million to an amount not to exceed $13.4 million.

The Regional Water Authority and the City of Asheville approved a resolution to amend Capital Project Ordinance 92-17 (29 Fund- Water Bond Capital Improvements Fund) to reflect the sale of revenue bonds in the amount of $12 million in September 2000. Since that time, project cost estimates and bond issuance costs have changed and it is necessary to increase the sale of the bonds as follows:

Revenues:	
Sale of 2001 Revenue Bonds	$13,400,000
	$13,400,000
Appropriations:	
Bee Tree Spillway	$6,220,000
NCDOT Non-Betterment	3,043,930
NCDOT Betterment	288,750
Building Safety Improvements	1,000,000
Critical Needs Improvements	1,560,567
Master Plan Improvements	275,000
Bond Administration	907,533
Annexation	104,219
	$13,400,00

The Bee Tree Spillway estimate was the main change. It increased from $5,500,000 to $6,220,000. There were also increases in bond issuance costs due to a larger bond issue. The N.C. Dept. of Transportation projects changed to include a consistent 10% contingency for all projects and the Critical Needs Improvements decreased due to the deletion of a project that is going to be postponed until the next bond issue.

Staff recommends approval of a budget amendment to establish funding for the $13,400,000 million revenue bond issue scheduled for February 2000.

Ms. Rebecca Guggenheim, Administrative Services Manager, answered various questions from Councilwoman Bellamy.

Budget Amendment for Little Bear Care Child Care

Summary: The consideration of a budget amendment, in the amount of $2,326, from Smart Start-Buncombe County Partnership for Children through the Special Needs Assistance Program for assistance for inclusive child care at Little Bear Care Program for extra cost while serving a child with special needs.

The City of Asheville applied to Smart Start for assistance in December 2000 for cost associated with providing extra staff for a child with special needs in Little Bear Care. The allocation was recently awarded in the amount of $2,326, and designated for cost associated with providing extra part-time staff for a child with special needs in Little Bear Care.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $2,326 for cost associated with providing extra part-time staff for a child with special needs in Little Bear Care

Budget Amendment for New Projects in the Public Art Program

Summary: The consideration of a budget amendment, in the amount of $37,650, for grant appropriations and City of Asheville Capital Improvement Project (CIP) budget appropriations for the Public Art Master Plan, Public Art Restoration/Conservation, and Public Art Special Projects, all new projects in the Public Art Program.

The City of Asheville applied for funds, and received donations and appropriations in September-November 2000 for three new Public Art Program projects. The allocations were recently awarded, in the amount of $37,650, and designated as described below.

Public Art Master Plan – A budget amendment in the amount of $16,000, including a $3,000 grant from the Community Foundation, a $5,000 grant from the North Carolina Arts Council, and $8,000 match from the City of Asheville CIP budget, to establish a budget for the Public Art Master Plan. Funds will be used to develop a master plan. The $3,000 Community Foundation grant is currently held in Urban Trail account 666-2512-383-3000 CP9911 to be transferred into the new Public Art Master Plan account.

Public Art Restoration/Conservation – A budget amendment in the amount of $13,650, including $1,000 private donation, and $12,650 match from the City of Asheville CIP budget, to establish a budget for restoration and conservation of the City's public art collection. A match of $12,650 is held by the Heritage Preservation in the Save Our Sculpture! 2000 grant program. Funds will be used to repair the sculpture at the Urban Trail's Station 25, Ellington's Dream, and to restore the "Energy Loop", the metal sculpture located in City-County Plaza.

Public Art Special Projects – A budget amendment in the amount of $8,000, including a $4,000 grant from the North Carolina Arts Council, and $4,000 match from the City of Asheville CIP budget, to establish a budget for the Public Art Master Plan. Funds will be used to develop artist selection and the temporary art process in the Revolving Gateway Project.

This is the first year of the City's one percent for public art as allocated in the CIP budget, with $50,000 available for matching funds for public art projects. The above matching funds are available in this account. The Parks and Recreation Department is responsible for the management and operation of the Public Art Program.

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $37,650, to establish budgets for the Public Art Master Plan, Public Art Restoration/Conservation, and Public Art Special Projects.

Regional Medical Park Drive Street Acceptance

Summary: The consideration of a resolution to accept Regional Medical Park Drive as a public right-of-way and City maintained street.

Section 7-15-1(f) 4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Regional Medical Park Drive is a newly constructed street servicing Regional Medical Park. The street has been constructed and inspected in accordance with the City of Asheville Standard Specifications and Details Manual. The street is a loop street that is approximately 2816 feet long.

Following City Council's approval of this resolution, Regional Medical Park Drive will be added to the official Powell Bill list.

Staff request City Council accept Regional Medical Park Drive as a public right-of-way and City maintained street.

Councilwoman Field asked if she had a conflict of interest if Regional Medical Park is a project her office is actively participating in. City Attorney Oast said that did not feel she had a conflict of interest since this is only a street acceptance.

Street Repair and Resurfacing Contract 12 – Phase II

Summary: The consideration of a resolution authorizing the City Manager to sign a contract, in the amount of $902,327, to Precision Contracting for Contract 12 - Phase II street improvements.

The City Council approved $1.6 million for street improvements for the 1995/1996 budget. This project is known as Contract No. 12 Street and Sidewalk Improvements. These funds were to be used for priority streets of the 43 streets identified. Phase I of these improvements were completed in 1996. The remaining budget for Phase II is approximately $650,000.

The City Engineering Department has developed construction plans for Phase II street and sidewalk improvements on the following streets: Tunnel Road (Sidewalk only) (East); Dellwood Street (West); Evelake Drive (North); Fayetteville Street (West); Hawkins Lane (North); Hi-Alta Avenue (West); Woodland Drive (West); King Arthur Place (North); Percival Court (North); and, Richland Street (West).

The project was advertised for one month. Staff received bids on November 10, 2000. Only one bid was received at this bid opening. The sealed bid was returned to the bidder unopened per City policy. The project was immediately re-advertised for three weeks. The Engineering Department held a second bid opening on November 28, 2000. Two bids were received and opened. The bids were received by Precision Contracting, in the amount of

110

$888,462.00, and APAC in the amount of $1,129,183.51. The engineer's estimate for Phase II, street and sidewalk improvements, was $694,895 for these streets.

Upon examination of the bids, it was determined that the low bidder (Precision Contracting) had failed to include one item in their bid. Precision Contracting had given a unit price for the same type of item as that omitted on a separate portion of the bid tabulation. Upon bringing this discrepancy to the bidders attention the bidder agreed to include the omitted item at the same unit price as that on the separate portion of the bid tabulation. The addition of this discrepancy to the original bid made a total of $902,327. After discussing the discrepancy with Legal staff, it was determined that Precision Contracting was a responsive bidder and that the bid was legal. A tabulation of bids is included with resolution.

Money for this contract is budgeted. The additional funds, other than the $650,000 in the capital budget for this project, are available in the Public Works concrete and resurfacing budgets.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract, in the amount of $902,327, to Precision Contracting for Contract 12 - Phase II street improvements.

License Agreement for Residential Driveway in North Fork Area

Summary: The consideration of a license agreement authorizing an encroachment in North Fork Watershed.

The applicants, Leigh and Katherine Kimmel represented by Black Mountain attorney Mike Begley, own property adjacent to City property near the North Fork reservoir, but downstream from the spillway. The Kimmels are constructing a residence on their property. In connection with their construction work, they are building a driveway.

There is a fence that has for years been assumed to be located on the common property line between the Kimmels' property and the City's property. A recent survey prepared for the Kimmels reveals that their line stops considerably short of the fence, indicating (a) that the fence is set back within the City's property line, or (b) that there is a gap in the two properties. The actual situation would be difficult to know without a survey of the City's property.

The Kimmels are asking for our agreement to allow for their driveway to encroach on our property (assuming it is ours), while preserving the rights of both parties to verify the ownership through appropriate means and not waiving any defenses to adverse possession. Without doing extensive and expensive research necessary to determine if the City has any interest in the property such that it could convey an easement or some other interest to the Kimmels, the license agreement is the best way to protect and serve the interests of the parties.

The Water Authority's attorneys have reviewed this matter, and concur in the use of the license agreement as the most effective means of addressing the situation.

Adopt a resolution authorizing the Mayor to execute a license agreement allowing the driveway encroachment.

Sister City Affiliation Approval

Summary: City Council is requested to approve the Asheville Sister Cities, Inc. partnership with Kastoria, Greece.

Since recently losing a Sister City in Kyrgyzstan, the Asheville Sister Cities has been looking for a new partner city. The Search Committee chaired by former Mayor Russ Martin is recommending the City of Kastoria, Greece.

Staff recommends City Council approve the Asheville Sister Cities, Inc. partnership with Kastoria, Greece.

Upon inquiry of Mayor Sitnick, former President of Asheville Sister Cities Inc., explained on how Sister Cities are chosen.

Update on Parking Study Recommendations

Summary: This is a review of an updated Status Report Spreadsheet used to track the progress of the Parking Study Implementation.

The City's Comprehensive Parking Study was adopted by the City Council in December 1998. The Parking Study Implementation Team was formed and the LX Team Charter was signed in June 1999. The study made about 60 recommendations for potential changes that would improve parking issues within the City. In addition, a few other recommendations have been made by other groups including the Asheville Downtown Association and the Implementation Team itself. A total of 67 recommendations have been incorporated into a single Status Report Spreadsheet. This spreadsheet is used to track the Parking Study Implementation progress on evaluating and implementing the recommendations. Beginning in July 1999, updates are being provided to the City Council twice each year; once in July and once in January.

Many issues surrounding have been completed in the past 6 months. The parking fees adopted by Council for Fiscal Year 2000-01 are in place and staff is hearing positive comments from business owners about parking availability downtown. A new Downtown Parking Guide brochure has been completed to help notify the public about parking garages, meters, rates, and citations. The installation of revenue control equipment in the parking garages was just completed. This equipment allows tracking of vehicles, easy reporting of data, and control at the central office. Staff can instantly determine the occupancy levels of each garage from the office. Another feature that is being tested and should be operational within a month or so is the ability to collect a fee on exit even when the booths are not staffed. In the fall, City staff installed color-coded signs and banners to direct drivers to the parking garages. The downtown traffic signal optimization is underway and the timing plans should be implemented and refined by the end of February. The Wall Street garage was painted and awnings were installed. The spreadsheet outlines the continuing work being done by employees from several departments to implement many of the remaining recommendations.

Staff recommends that Council review the Status Report Spreadsheet and direct staff to continue implementing the Parking Study.

Grant Application to Assist with Development of Skateboard Park – This item was removed from the Agenda.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

I-26 UPDATE

Mr. W. Louis Bissette and Mr. Brownie Newman, Co-Chairs of the Community Coordinating Committee on the I-26 Project, updated City Council on the I-26 project issues and reviewed the five (two of which the N. C. Dept. of Transportation (NC DOT) originally suggested) current alternative alignments that the Committee is requested that the NC DOT review. It is their understanding that if the NC DOT considers the alternatives, it may only result in only a year delay of the project. Mr. Bissette stressed that the Committee is committed to having the project completed on schedule.

After asking various questions about each of the alternatives, City Council thanked the Committee for their hard work on this project.

RESOLUTION NO. 01-06 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH CAROLINA CORNERSTONE CONSTRUCTION FOR THE CONSTRUCTION OF PRITCHARD PARK

Mr. Alan Glines, Urban Designer, said that this is the consideration of a resolution authorizing the City Manager to sign a contract with Carolina Construction Company to complete the construction of Pritchard Park.

The City of Asheville Parks and Recreation Department, at the request of City Council, began a public process to determine the future design for Pritchard Park. A task force was developed to direct the community input process. The Genesis Group developed a conceptual plan and that plan was presented and approved by the community and adopted by City Council on January 25, 2000. Since then construction documents were developed. A portion of the total plan was completed by City of Asheville crews in the fall of 2000. Renovation of water and sewer lines was also a part of this construction.

This contract will secure the services of Carolina Cornerstone Construction to complete the elements in the park area. This work will include the construction of the terraced plaza space, sidewalks throughout the park, a decorative brick wall, the gateway corners for the park, and install electrical components for the park and Bele Chere power needs. Carolina Cornerstone Construction will also install the fixtures (City purchased) for the park. The contract amount of $260,000 is the result of an advertised bid for services. A total of six firms submitted bids for this project. The bids ranged from $260,000-$379,000. This amount is within budget.

The widening work to improve the sidewalk along the building-side of College Street has been completed. The sidewalk width was increased from 9 feet to 18 feet. Other amenities along the sidewalk include trees and tree grates, building access to comply with the American with Disabilities Act, and ornamental street lights. Parallel parking is also in place along the sidewalk in front of the buildings on College Street. The work will commence immediately and be completed by April of this year.

The Parks and Recreation Department staff recommends City Council authorize the City Manager to enter into a contract with Carolina Cornerstone Construction, in the amount of $260,000, to complete the construction of Prichard Park.

Councilman Worley moved to suspend the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Councilman Worley moved to adopt Resolution No. 01-06. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 261

AZALEA ROAD FEASIBILITY STUDY

Parks and Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the purchase of 155 acres on Azalea Road for the development of a recreation facility and a beneficial fill/composting site and approving an associated budget amendment, in the amount of $166,327.

City Council directed the Parks and Recreation Department to proceed with the necessary steps to acquire the Lake Craig and Azalea Road Park properties. Direction included the completion of a Feasibility Study to determine whether the purchase of the property was viable for use as a park and beneficial fill site.

For several years, the Parks and Recreation Department has investigated the purchase of the property located on Azalea Road as a future site for recreation. During this process, staff was approached by the Public Works Department about partnering in this project to include adding a beneficial fill and composting site. A total of 155 acres has been identified as part of this project. On June 13, 2000, City Council approved entering into a contract with Woolpert LLP to complete a Feasibility Study regarding purchase of the property for both recreation and beneficial fill/composting site. The scope of services included in Woolpert's contract contained an analysis of the flood plain/floodway regulations, wetland review, utility investigation, traffic impact analysis, beneficial fill investigation and cost of benefit analysis. Based upon the completion of the Feasibility Study, Woolpert has determined that there are no negative circumstances or issues surrounding the purchase of this property and recommends that the City of Asheville purchase the 155 acres to be used as a recreation and beneficial fill/composting site.

City staff and the consultant have worked together with a task team of representatives from the east Asheville community along with other interested user groups. Several meetings have occurred over the past 1 ½ years to solicit input in this process. Throughout these discussions, the City staff has maintained its original direction by City Council which was to determine the feasibility of the purchase of this property. The results of this decision have been based upon the recommendations from the consultant regarding the above issues which were predetermined by the task force as being the most important issues to be addressed.

Also included in this staff report is a budget amendment appropriating funds from the Public Works Department totaling $166,327 which will be combined with existing capital funds in the Parks and Recreation budget for this project. The total balance available for the project represents $314,624. These funds will be used to develop a master plan for the site and to make the first year payment for purchase of the property.

City staff recommends that City Council approve proceeding with the purchase of the 155 acres and to negotiate the best price possible with the two property owners based upon options which were signed with them in March of 1999. Staff also recommends approval of the budget amendment appropriating $166,327 from Public Works Department's budget to current CIP in Parks and Recreation.

Mr. Doug Jewell, member of the Evaluation Team, briefly explained the project purpose of the City considering purchasing an approximate 155 acre tract of land for a community park and beneficial fill and composting mulch location. The designated uses should be compatible with adjoining properties, environmentally safe, and not cause significant impact to the natural resources. The Evaluation Team (which he identified) is to assist the City in making a Go/No Go decision regarding the purchase of the property considering six technical factors. He explained the site context and the existing land uses, which include agriculture, an historic site, horse facility, material disposal, lakes, woods, sand/gravel mining and equipment maintenance/storage.

The first technical factor he reviewed was the floodplain/floodway regulations. The findings include that the 100-year floodplain occupies virtually all the flat lowlands, floodplain will hold water periodically impacting use, and regulated floodway along Swannanoa River. The conclusions/recommendations include (1) active and passive recreation can occur within the floodway, but filling is restricted; (2) structures and beneficial fill areas must be elevated above the 100-year flood; and (3) additional study required to alter the floodway downstream of disposal mound. The summary of the floodplain/floodway regulation is (1) site is feasible for a community park and beneficial fill location; (2) restrictions on the siting of facilities can be accommodated; (3) parks are commonly located within floodplains and floodways; and (4) must keep buildings, structures, and beneficial fill location out of the regulated floodway.

The second technical factor he reviewed was the wetland review. The findings include that vegetated wetlands exist on southern portions of the site, ponds and river are regulated by the Environmental Protection Agency and the N.C. Dept. of Natural Resources, and wetlands to be certified by state and federal regulations. The conclusions/recommendations include (1) wetlands should be preserved as open space (no development); (2) wetlands offer opportunity for environmental education; and (3) permitting will be necessary if wetlands are impacted. The summary of the wetland review is: (1) site is feasible for community park and beneficial fill location; (2) haul roads to the beneficial fill site will need to avoid the wetlands; (3) wetlands are community incorporated into parks as features; and (4) wetlands are located along the perimeter of the site and should not severely restrict facility layout.

The third technical factor he reviewed was the utility investigations. The utilities include sanitary sewer, telephone, electric, water and natural gas. The findings include sanitary sewer along Azalea Road, electric transmission lines on the south portion of the property, underground power is minimal, telephone serves existing buildings, no water service along Azalea Road and no natural gas along Azalea Road. The conclusions/recommendations include (1) sanitary sewer service is available; (2) electric service is available; (3) telephone service is available; (4) water service possible from Oteen Church Road; (5) natural gas service is not likely; and (6) transmission line relocation is costly. The summary of the utility investigations are: (1) site is feasible for a community park and beneficial fill location; (2) beneficial fill can be accommodated with little impact to utilities; and (3) park development can be served reasonably with utilities.

The fourth technical factor he reviewed was the traffic impact analysis. The findings include (1) no impact on signalized intersections; (2) delay increases at Azalea/Swannanoa; (3) other issues: (a) no left turn lane on Swannanoa at Azalea; (b) left land turn on Tunnel at Azalea; (c) sight distance problem for left turns from Swannanoa to Azalea; and (d) cut-through potential - 86 vehicles in each direction in peak hour. The findings include issues such as (1) width, curvature, and sight distance along Azalea – acceptable as a local access street; (2) access for cyclist in both directions and for emergency vehicles needed from both ends of Azalea; and (3) short off-set between Azalea and Lower Grassy Branch at Tunnel Road. The conclusions/recommendations include two primary alternatives: (1) Close Azalea Road to through traffic - (a) leave Azalea Road open to cyclists and emergency vehicles; and (b) future aligning Azalea Road with Lower Grassy Branch and add right turn lane to Azalea Road at Tunnel Road; and (2) keep Azalea Road open at Swannanoa - (a) potential cut-through in adjacent neighborhood (b) add left turn lane on Swannanoa; (c) improve left turn sight distance from Swannanoa; and (d) add right turn lane on Azalea at Swannanoa if needed in future. The summary of the traffic impact analysis summary is: (1) site feasibility for community park and beneficial fill location; (2) Woolpert recommends Alternative 1 – Closing Azalea near Swannanoa to vehicle traffic; and (3) address speed limit, speed humps, sight distance along Azalea in design phase.

The fifth technical factor he reviewed was the beneficial fill. The findings include that fill began with construction of I-40 in 1963, before floodplain regulations; some minor dumping requiring clean-up; previous dumping violations per state (N.C. Dept. of Environment and Natural Resources); no current violations; and minor failure cracks along existing fill slope. The conclusions/recommendations include: (1) beneficial fill and composting/mulching can occur on-site at designated mound area; (2) beneficial fill located south of electric power right-of-way on approximately 5 acres; (3) composting/mulching located north of electric power right-of-way; (4) potential volume of fill over a 14-year period is 251,000 tons; and (5) general design requirements: (a) no wetland impacts; (b) not allowed in the 100-year floodway or floodplain; (c) no impact to historical sites; (d) no impact to endangered species; (e) E&SC plan required; and (f) visual screening from the parkway. The beneficial fill summary is (1) site is feasible for a beneficial fill and composting/mulch location; (2) site can meet state requirements; (3) site meets Public Works volume requirements; and (4) initial access to site across existing bridge – future access on new bridge.

The sixth and final technical factor he reviewed was the cost-benefit analysis. The findings and observations show that the projected annual operating cost of using beneficial fill location (current dollars) totals $229,200, whereas, the projected annual operating cost using the County landfill (current dollars) totals $659,400. The conclusions/recommendations include: (1) cost/benefit analysis shows the Azalea Road site is more advantageous than using County landfill; and (2) potential annual savings (a) $430,200; and (b) City breaks even on entire site in less than four years. The cost-benefit analysis summary is (1) site is feasible and economically advantageous as a beneficial fill location; and (2) savings can be applied to the overall financial equation of the entire project.

The final study summary is that based on the six technical factors, the Evaluation Team unanimously recommends that the City purchase the property for a community park and beneficial fill location.

The Task Force has had two meetings with the community, seven hours of discussion and answered approximately 300 questions. He responded to the primary Task Force issues which questions included: will development of the site increase flooding, will development of the site impact water quality, will development of the site make traffic worse, is the City buying an environmental problem with the disposal site; is the disposal site stable and safe, will beneficial fill create an eyesore; will composting/mulching create objectionable smells and noise, and will site development lower property values.

If the City does not buy the site (1) the disposal site will likely be purchased by a commercial fill operation and the City may have to pay tipping fees; (2) much of the site will likely be developed as single and multi-family residential; (3) no protection for the Swannanoa River; and (4) the City will lose a prime City park location.

Mr. Mike Connor (member of the Evaluation Team) and Mr. Jewell answered various questions/ comments from Council, some include, but are not limited to: did they have access to the previous borings, is the contaminated soil from a service station properly corrected, is there any potential problem for children from the contaminated soil, what is the final height of the mound, can the transmission lines be buried, what is the status of the options to purchase, who is on the Task Force, can an environmental park still be developed, can the Thomas Wolfe Cabin be open for public access; how would the failure cracks along the existing fill slopes be fixed; need to do everything possible in terms of alleviating smell and noise to the neighborhood; what is the tentative plans for the number of fields; is there an additional need for soccer fields; what kind of equipment will be used with composting mulch and how many days a month would that piece of equipment be used; and what is the status of the bridge and the cost of a new one if the City has to build one.

City Manager Westbrook said that after we purchase the land and develop a master plan, then we can start attracting some grants – composting, education, reclamation of area, stabilization of the Swannanoa River, cleaning of the Swannanoa River, flood prevention and erosion, wetland protection, etc.

Councilwoman Bellamy said that due to the number of residents' concerns and the information in the feasibility study, she requested that City Council hear comments on the proposed purchase of property at their January 23, 2001, meeting, but delay the vote until another meeting.

After a brief discussion, it was the consensus of Council to hear comments from the public about this issue at their formal meeting on January 23, 2001, with the possibility of voting. However, if Council is not comfortable in voting at the January 23, 2001, meeting, then City Council will plan on voting on this issue at their community meeting on January 30, 2001, at the newly renovated Municipal Building located at 100 Court Plaza, beginning at 7:00 p.m.

ORDINANCE PROHIBITING DISCRIMINATION IN EMPLOYMENT IN THE CITY OF ASHEVILLE

At the request of City Attorney Oast, this item was removed from the agenda so that City staff may research it further.

CITIZEN-TIMES CONTRACT

Mr. Robin Nix, Public Information Coordinator, said that this is the consideration of a resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Each year City staff and the staff of the Asheville Citizen-Times reviews retail advertising that the City has placed during the year to determine what rates the City will qualify for the following year. Last year all departments in the City ran a total of 77 column inches per week in the Asheville Citizen-Times. This qualifies the City to take advantage of a weekly frequency rate running 64 to 90 column inches per week.

The open rate for advertising in the Asheville Citizen-Times is $45.21 per column inch daily and $58.11 per column inch on Sunday. This contract will allow the City to advertise for $27.40 per column inch daily and $35.55 per column inch on Sunday. Based on the amount of advertising placed in 2000, the City saves $71,685 by signing the weekly frequency contract.

This contract is valid for all City departments that advertise with the Asheville Citizen-Times, including the Asheville Civic Center.

Staff recommends approval of the resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

SCHOOL BOARD APPOINTMENT PROCESS

City Council briefly discussed the unwritten policy that all candidates must be City of Asheville residents and live in the school district. It was the consensus of Council to advise potential candidates that they must be City residents and there is a strong preference that they live in the school district.

It was the consensus of City Council to wait until after the January 23, 2001, deadline for applications to determine how many interviews will be scheduled.

NATIONAL BASKETBALL ASSOCIATION

Councilman Hay reminded City Council of the meeting the following day with representatives of the National Basketball Association and SFX for the purpose of discussing the possibilities of locating an NBA team in the City of Asheville. He said that the Buncombe County Commissioners, as well as our local delegation to the N.C. General Assembly, have been invited.

When Councilman Peterson asked who from the County and legislative delegation would be present because it was very important for them to have a good understanding, Councilman Hay could not be certain but invitations were faxed to them on Friday, January 12, 2001.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:52 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Friday - January 19, 2001
Saturday - January 20, 2001
City Council Annual Retreat Pine Crest Inn, Tryon, N.C.

Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Friday, January 19, 2001

Update on Fiscal Year 2000-01 Goals and Objectives - City Council was updated on the Fiscal Year 2000-01 Goals and Objective. Updates included the Council priorities of sustainable economic development/smart growth, transportation, street and sidewalk maintenance, parks and recreation, status of projects from the additional 1-cent, common sense governance, and other strategic initiatives.

Budget/Financial Forecasts - City Council heard a review from Finance Director Bill Schaefer and Budget Director Ben Durant on the Fiscal Year 1999-2000 Fund Balance position, the Fiscal Year 2001-02 budget forecast and unfunded issues (which included Lake Craig and two fire stations).

Discussion surrounded the Five Year Capital Improvement Program for the Additional 1-Cent Proceeds. Councilwoman Bellamy asked to see more housing in the use of the funds. City Manager Westbrook said that he would bring this information back to Council at a worksession. Councilman Hay suggested we discuss with the County their proposed allocations.

Area of Consideration/Extension of Extraterritorial Jurisdiction (ETJ) and Expansion of Inspection and Permitting Service – Planning & Development Director Scott Shuford explained in detail the City's authority with regard to the expansion of the ETJ, as well as providing City services in the new ETJ. He explained that the purpose of an ETJ is to ensure orderly development and aiding future annexations. Asheville has a relatively small area outside our corporate boundaries that is covered by our ETJ and we only exercise zoning and subdivision review services within that area. The following City services are what we would like to offer in the ETJ: (1) Building Code review and inspections (no Minimum Housing Code services within the ETJ are proposed) – No General Fund impact; (2) periodic Fire Code enforcement – No General Fund impact; (3) erosion control, floodplain and stormwater management – No General Fund impact; (4) junked vehicle enforcement – Zoning fees will have to be increased to support added staffing; and (5) address assignment – No General Fund impact. With the use of a map, he proposed ETJ boundary expansion along entryway corridors, in areas where infrastructure expansion is planned or likely and in areas having a variety of land uses. Potential public concerns include new or higher service fees; new or more extensive requirements may increase building costs; County or fire districts may object to losing inspection fees or turf; and zoning and property rights issues. He felt the public concerns are outweighed by public safety considerations; ISO considerations; effectiveness of future annexation phases; consistency in review and inspections; and control of development pattern.

Upon direction of Mayor Sitnick, Mr. Shuford said that he will look into better enforcement of the requirement that all homes and businesses be numbered.

City Council requested additional information on the addition of ETJ services, but gave general direction to staff to bring back ETJ expansion proposals, in addition to proposals on expanding services where there was no direct financial impact on the City to do so.

Mr. Shuford explained that the benefit of adopting a resolution of consideration is that (1) after a one year period of having the resolution of consideration on record, there is no one year waiting period required between the adoption of ordinance and the effective date of the annexation; (2) the public will have a much better idea of future City annexation plans; and (3) the City can approach annexation in a more comprehensive fashion, resulting in a more effective and efficient annexation program.

It was the consensus of City Council to instruct staff to proceed with future annexations using the area of consideration method and to bring back to Council the proper resolutions and maps to do so.

Litter Abatement on Certain State Maintained Roads - City Council was briefed on the current N.C. Dept. of Transportation's litter abatement efforts by Public Works Director Mark Combs. It was the consensus of City Council to instruct staff to begin negotiating a Municipal Agreement with the N.C. Dept. of Transportation (NC DOT) for the state to pay the City per lane mile to clean certain state roads within the City of Asheville.

Red Light Cameras – Police Chief Will Annarino briefed City Council on the use of traffic control photographic systems within the City limits to identify violations of traffic signals and speed limits. He used the Charlotte, N.C., program as a model for the presentation. The enabling legislation provides for "non-criminal, civil penalty" for violations detected by the traffic control system and no insurance points will be assigned to the owner or driver of the vehicle. The system operates 24/7; the camera records date, time and vehicle speed, elapsed time since the beginning of the red light; and photos are printed on citations and mailed to the owner within 48 hours of the violation. Crashes at dangerous intersections are likely to decline 25-50% while the severity of the remaining accidents will be reduced. Initially, many citations will be issued but will diminish as drivers begin to comply with traffic standards. Some revenue will be generated as a result of this program but the amount of revenue will be determined through contractual negotiations with the service provider. The provider of the service pays all costs associated with the program.

Councilwoman Bellamy did not support the use of this legislation as she feels it infringes on individual rights. She said that even though the person is breaking the law, they do have civil rights.

Councilman Peterson also did not support the City seeking this type of legislation because he was not comfortable with the "government watching."

City Attorney Oast said that the implementation of this matter requires approval by the General Assembly and that City Council will need to approve the legislative package first. He said that he would make sure it is noted that this does not have the unanimous support of City Council.

Legislative Issues - City Attorney Oast reviewed the past year's legislative successes in the General Assembly and discussed legislative interests to cities in which the General Assembly enacted in its 2000 session. He explained the following matters which City Council may wish to pursue, or continue pursuing: (1) non-betterment relocation costs; (2) traffic enforcement cameras; (3) hotel/food and beverage tax; additional sales tax; (4) conditional zoning; (5) suspension of bidding and contracting laws for public projects; and (6) smart growth initiatives. He also said that he is working with the N.C. League of Municipalities on some legislation to enable cities to regulate and impose fees for technology infrastructure installed in the right-of-way.

At 5:40 p.m., Councilwoman Bellamy and Councilman Peterson left the meeting (they returned the following morning at 8:30 a.m.). They submitted their comments on the legislative issues as follows: (1) Both support the legislation for non-betterment costs for waterline relocation; (2) Both do not support the traffic enforcement cameras; (3) Councilwoman Bellamy would like additional information on the hotel food and beverage taxes and would like to see a projection table of what the anticipated taxes would bring to Asheville and Councilman Peterson supports this legislation 100%, even if the City does not sign a contract with the NBA; (4) Councilwoman Bellamy supports the conditional zoning legislation and Councilman Peterson does not support this legislation without seeing and studying specific legislation; and (5) Councilman Peterson supports the suspension of bidding and contracting laws for public projects.

Saturday, January 20, 2001

Update on Street Resurfacing

Public Works Director Mark Combs updated City Council on the paving program, noting that the Fiscal Year 2000-01 budget total is $1,200,000. He outlined the roads completed during the 2000 paving season along with the remaining resurfacing schedule, which has a target completion date of June 30, 2001.

Update on Traffic Calming

City Engineer Cathy Ball explained how the six areas for traffic calming (Wyoming Road, Wood Avenue, S. French Broad Avenue, Gracelyn Road, Florida Avenue and Caribou Road) are being moved through the project development process.

Update on Transit

Transit Services Director Bruce Black updated Council on the expanded service of the following five routes: Enka-Candler, Airport, Biltmore Square Mall, N.C. Arboretum and the UNC-Asheville downtown shuttle. A brief discussion was held about working with Wachovia Bank for a bus shelter in front of their business downtown, as well as shelter sponsors.

Update on Stormwater Regulations

City Engineer Cathy Ball updated City Council on the status of the development of the City's stormwater program, which must be submitted to the State on or before March 2003. The program must describe how the City will attempt to meet six minimum requirements: (1) Public Education/Outreach (approximately $10 per year); (2) Public Participation/Involvement (approximately $5,000 per year); (3) Illegal/Illicit Discharge Detection and Elimination (approximately $50,000 per year); (4) Construction Site Runoff Construction (no additional cost); (5) Post-Construction Runoff Control (approximately $5,000 per year); and (6) Pollution Prevention/Good Housekeeping Measures (approximately $50,000 per year).

At the request of Mayor Sitnick, Ms. Call said that the City will continue to look at pervious materials and even possibly creating some incentives to urge the development community to use those materials.

City Council briefly discussed a Stormwater Master Plan, however, City Manager Westbrook noted that we would have to find some fee to pay for the project. Councilman Peterson suggested $1 tacked onto the water bill because ultimately businesses will benefit from this.

Update on Diversification Efforts

Director of Human Resources Jeff Richardson reviewed the City's mission statement, reviewed the EEOC data from 1998 to 2001 and efforts in diversification and recruitment. From

July 1, 1999 – January 1, 2001, the City has had a net loss of six white males, net gain of four white females, net gain of six African American males; net loss of three African American females and a net gain of five other minorities. The City's workforce as of January 1, 2001, is 75% male, 25% female; 85% white and 15% minority. He noted that 47 employees have been hired in Police and Fire over the past 18 months – 51% of those hired have been non-white males. The City will continue to build and strengthen it's diversity coalitions and efforts with other local entities and businesses in our area. In addition, the City will continue to seek out opportunities to identify minority employees who have an interest and show potential to be groomed into management positions. Increasing minority representation at the management and supervisory level is a priority.

Upon inquiry of Councilman Peterson, Mr. Richardson noted that there is a low turn-over rate in the professional positions; however, when vacancies occur, the City does look hard to increase it's diversity.

Modernization of City Hall Elevators

Parks & Recreation Director Irby Brinson discussed the automation of the City Hall elevators, along with the history of the elevators. He outlined that staffing which consists of two full-time elevator operators, one part-time elevator operator and a partial salary of a supervisor. In addition, operating costs include a maintenance agreement ($35,000 per year), uniforms and miscellaneous supplies – staffing and operating costs totaling $118,936 annually. Concerns to be addressed are (1) maintenance costs; (2) parts and service; and (3) safety issues which include the mechanical room; leveling of floors; and the age and reliability of the current system.

Mr. Brinson proposed (1) replacing all 3 elevators with automated response; (2) microprocessor-based control system; (3) update to machine room equipment; (4) will keep the existing cars to protect the historic value of the elevators; (5) interior gates will be removed; and (6) retain the car operating panels for appearance only but they will not be operable. New emergency car lighting will be installed, along with a telephone cabinet and new hall buttons (but retain the hall position indicators).

The cost of automation, including the additional work required for control room upgrades, total $638,540. Possible grant opportunities include a N.C. Energy grant up to $500,000 and partnered with other energy efficiency measures outlined by Waste Reduction Partners.

Pros of the automation include (1) upgrade to more efficient and effective operations; (2) reduce safety concerns; (3) reduce maintenance costs; (4) computerized system for responsiveness; and (5) reduced overall cost of operations. Cons include: (1) historical operations changed; (2) personal relations factor of operators; and (3) public perception of change.

Vice-Mayor Cloninger noted that the directory on the First Floor needs to be more conspicuous. Councilman Peterson wondered if some type of information desk on the First Floor would be feasible. City Manager Westbrook responded that creative signage will alleviate that need.

Mayor Sitnick stated that the open vat of mercury on the 9th floor raised serious concerns regarding the current operation.

Councilman Peterson questioned if the change-over could be staggered so as not to have the big capital costs up front.

It was the consensus of City Council to proceed with implementing the upgrade of the City Hall elevators subject to funding in the upcoming budget and future years.

Re-emphasis of Cultural Programming

Parks and Recreation Director Irby Brinson briefed Council on the progress to date on the enhancement of cultural programs. There was the establishment of the Public Art Board; the Urban Trail moved to Parks and Recreation; there is an agreement with, and support of, the YMI; and there has been work with various "arts" groups. He felt to achieve the goal of City Council with regard to cultural programming, he proposed (1) combining the vacant Public Art Administrator and Cultural Programs Supervisor positions into one and establish a Cultural Arts Superintendent position; (2) establishing a Cultural Arts Division; and (3) contracting with the Asheville Arts Council, which will help with direct assistance to community festivals and establish new events. He then did an analysis of the current costs ($159,241) vs. the proposed change costs ($138,342), showing a savings of $20,899. He then outlined the benefits being (1) meets Council's goal of improving the quality of life and recognition of Asheville as a top arts destination; (2) increase focus on cultural arts both visual and performing; (3) cost savings of $21,000; (4) coordination of efforts City-wide; and (5) continue relationship with the YMI.

Mayor Sitnick expressed an interest of establishing a Department of Cultural Affairs, which might include the Film Board, a Fine Arts Festival, the YMI, Public Art Board, etc.

Councilman Hay felt it might be more appropriate for the Film Board to fall into the Economic Development Division, not Cultural Affairs.

Vice-Mayor Cloninger, member of the Film Board, noted that there is a need to work with Buncombe County on a joint City/County Film Board.

Councilwoman Field noted that the City current has a lot of appearance boards (River District, Historic Resources Commission, Downtown Design, etc.) and felt it would be a good idea to try and combine them.

Upon inquiry of Councilwoman Bellamy, Budget Director Ben Durant said that the proposed Arts Council agreement for $20,000, would be in addition to the current funding the Art Council receives from the City from it's outside agency request.

It was the consensus of City Council to proceed with staff's recommendations in the proposed budget. In addition, staff is to report back to Council on Film Board issues to include what they have done in the past year, what department the Film Board should be located in, the need for staffing, and proposed funding for staffing.

Impact on the City of GASB 34 Financial Reporting Requirements

Finance Director Bill Schaefer explained that the Governmental Accounting Standards Board (GASB) Statement Number 34 is the new financial reporting model and the differences between what the City is currently using vs. this new reporting.

City Council Goals

City Council assessed Asheville's current strengths: water quality; fire and police protection; low crime rate; vibrant downtown; increasing level of cultural and recreational activities; opportunities for seniors; staff; community oriented government; progress to date at the Civic Center; attractive community/air quality/appealing community; growing arts community; higher level education infrastructure; diversity in kinds of people; use of smart growth model;

addressing serious problems such as (a) streets and sidewalks; (b) parks and recreation; (c) affordable housing; and (d) Civic Center; willingness and capabilities of doing new and innovative programs; community of people defined differently; open government; spirituality of community; staff creativity and innovation; strong non-profit base; inclusive strong community leadership; river running through community; own architectural style; City's commitment to the overall quality of life; mountains; strong volunteer and philanthropic community; and Airport.

City Council then assessed Asheville's current weaknesses: air quality; cost of housing; increased traffic congestion; increase achievement gap of Asheville High School; low graduation rate for minority students; lack of availability of qualified jobs; increasing number of 18-34 year olds leaving area; lack of MSD extension policy; lack of diversity on boards and commissions; under-utilization of commercially-zoned property; under-utilization of high tech industry; need to provide special education for high tech industry jobs; relying too heavily on property taxes that benefit the entire community beyond the City limits; need to have users pay for services; slow growth rate in property tax base; lack of community consensus on growth issues; small amount of developable land; challenges in terrain; non-profits own a lot of land; City/County government relations; lack of industrial sites; public demand for better streets and sidewalks; Civic Center is an outdated facility; high operating deficit at Civic Center; Raleigh connection; aging infrastructure; wage level; perception of Asheville from within and from outside; water agreement; sewer agreement; environmental challenges; revenue streams; burden on Asheville taxpayer to pick up on so many things; Authorities (Water, Sewer, Airport); dilemma of not being able to say enough is enough pertaining to growth issues; air service, and litter.

City Council then discussed Asheville's future opportunities: lobby and financial support of passenger rail service to Asheville; Buncombe County's support of efforts regarding the Civic Center; number of tourists that visit Asheville; increase number of technology based companies; keeping the N.C. Dept. of Transportation on time with the I-26 Project; revitalize the River District; innovatively solve affordable housing problems; lasting effect on community to renovate or build a new Civic Center; Civic Center/planning/NBDL; Pack Square Renaissance movement; arts community; attracting new high tech industry; re-dedicate a commitment to "the Block", WECAN and Haywood Road neighborhoods; increase funding/enforcement efforts to eliminate litter on poles and on our streets; Smart Growth Commission in Raleigh; and new revenue sources.

City Council then discussed potential challenges to Asheville's success: revenue streams; public and delegation support of tax increases; keeping Asheville clean; meeting traffic calming needs of all neighborhoods; affect of re-districting; funding of infrastructure demand by growth; develop a sense of Asheville as a greater community; creating effective public/private initiatives; cooperation between governmental units; better public relations for our own City; impact of ultimate I-26 construction; and paying non-betterment costs of N. C. Dept. of Transportation projects.

City Council tentatively agreed upon the following Fiscal Year 2001-02 Goals:

1) Enhance the City's available fund balance to maintain City's good financial condition (review of fiscal policy)

2) Establish a clean Asheville

3) Decide whether to repair or replace the Civic Center and develop funding strategies (work with community leaders and delegation to find funding sources that don't over-burden City taxpayers)

4) Promote long-term planning and smart growth development pattern (continue or expand ETJ and annexation process, investigate new tools for downtown development)

5) Promote economic development (implementation of smart growth policies through better utilization of existing areas)

6) Reduce the City's reliance on the property tax base by identifying new and alternative revenue sources which do not over-burden City taxpayers

7) Establish or improve relationships with state government

8) Address traffic issues including traffic flow, safety, etc.

Some other issues were discussed as follows:

1) Common Sense Government (continue to better use the government channel, utilize new camera for infomercials on issues for a better informed public, utilize media and develop speakers program)

2) Find a way to sell Asheville souvenirs (place, staffing)

3) Establish a policy procedure that if we appoint a member to the Airport Authority, Water Authority, MSD, etc., in their official Council capacity, that if they do not get re-elected, they get replaced by someone else

4) Non-toxic control for sidewalk needs

5) Kiosks for neighborhoods

6) Include public restrooms as we build downtown decks

7) Hope for City Council to support and attend a local green building roundtable

Mayor Sitnick adjourned the meeting at 4:47 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – January 23, 2001 - 5:00 p.m.

Regular Meeting

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

INVOCATION

Councilwoman Bellamy gave the invocation.

I. PROCLAMATIONS:

II. CONSENT:

At the request of Mayor Sitnick, it was the consensus of City Council to add a resolution authorizing the City to apply for grant funds through the N. C. Dept. of Environment and Natural Resources to assist with the renovation of the park at the Burton Street Center to the Consent Agenda as Item I.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON JANUARY 9, 2001, AND THE WORKSESSION HELD ON JANUARY 16, 2001

B. ORDINANCE NO. 2783 - BUDGET AMENDMENT TO THE 29 WATER BOND CAPITAL IMPROVEMENTS FUND TO REFLECT AN INCREASE IN THE SALE OF REVENUE BONDS FROM $12 MILLION TO AN AMOUNT NOT TO EXCEED $13.4 MILLION

Summary: The consideration of a budget amendment to the 29 Water Bond Capital Improvements Fund to reflect an increase in the sale of revenue bonds from $12 million to an amount not to exceed $13.4 million.

The Regional Water Authority and the City of Asheville approved a resolution to amend Capital Project Ordinance 92-17 (29 Fund- Water Bond Capital Improvements Fund) to reflect the sale of revenue bonds in the amount of $12 million in September 2000. Since that time, project cost estimates and bond issuance costs have changed and it is necessary to increase the sale of the bonds as follows:

Revenues:	
Sale of 2001 Revenue Bonds	$13,400,000
	$13,400,000
Appropriations:	
Bee Tree Spillway	$6,220,000
NCDOT Non-Betterment	3,043,930
NCDOT Betterment	288,750
Building Safety Improvements	1,000,000
Critical Needs Improvements	1,560,567
Master Plan Improvements	275,000
Bond Administration	907,533
Annexation	104,219
	$13,400,00

The Bee Tree Spillway estimate was the main change. It increased from $5,500,000 to $6,220,000. There were also increases in bond issuance costs due to a larger bond issue. The N.C. Dept. of Transportation projects changed to include a consistent 10% contingency for all projects and the Critical Needs Improvements decreased due to the deletion of a project that is going to be postponed until the next bond issue.

Staff recommends approval of a budget amendment to establish funding for the $13,400,000 million revenue bond issue scheduled for February 2000.

ORDINANCE BOOK NO. 19 – PAGE 68

C. RESOLUTION NO. 01-07 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH THE ASHEVILLE CITIZEN-TIMES FOR WEEKLY FREQUENCY ADVERTISING

Summary: This is the consideration of a resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

Each year City staff and the staff of the Asheville Citizen-Times reviews retail advertising that the City has placed during the year to determine what rates the City will qualify for the following year. Last year all departments in the City ran a total of 77 column inches per week in the Asheville Citizen-Times. This qualifies the City to take advantage of a weekly frequency rate running 64 to 90 column inches per week.

The open rate for advertising in the Asheville Citizen-Times is $45.21 per column inch daily and $58.11 per column inch on Sunday. This contract will allow the City to advertise for $27.40 per column inch daily and $35.55 per column inch on Sunday. Based on the amount of advertising placed in 2000, the City saves $71,685 by signing the weekly frequency contract.

This contract is valid for all City departments that advertise with the Asheville Citizen-Times, including the Asheville Civic Center.

Staff recommends approval of the resolution authorizing the City Manager to sign a weekly frequency advertising contract with the Asheville Citizen-Times.

RESOLUTION BOOK NO. 26 – PAGE 263

D. RESOLUTION NO. 01-08 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ACCEPT REGIONAL MEDICAL PARK DRIVE AS A PUBLIC RIGHT-OF-WAY AND PUBLICLY MAINTAINED STREET

Summary: The consideration of a resolution to accept Regional Medical Park Drive as a public right-of-way and City maintained street.

Section 7-15-1(f) 4.a requires that streets dedicated for public uses be accepted by resolution of City Council.

Regional Medical Park Drive is a newly constructed street servicing Regional Medical Park. The street has been constructed and inspected in accordance with the City of Asheville Standard Specifications and Details Manual. The street is a loop street that is approximately 2816 feet long.

Following City Council's approval of this resolution, Regional Medical Park Drive will be added to the official Powell Bill list.

Staff request City Council accept Regional Medical Park Drive as a public right-of-way and City maintained street.

Councilwoman Field asked if she had a conflict of interest if Regional Medical Park is a project her office is actively participating in. City Attorney Oast said that did not feel she had a conflict of interest since this is only a street acceptance.

RESOLUTION BOOK NO. 26 – PAGE 264

E. RESOLUTION NO. 01-09 - RESOLUTION AWARDING CONTRACT TO PRECISION CONTRACTING INC. FOR CONTRACT 12 – PHASE II – STREET REPAIR AND RESURFACING

Summary: The consideration of a resolution authorizing the City Manager to sign a contract, in the amount of $902,327, to Precision Contracting for Contract 12 - Phase II street improvements.

The City Council approved $1.6 million for street improvements for the 1995/1996 budget. This project is known as Contract No. 12 Street and Sidewalk Improvements. These funds were to be used for priority streets of the 43 streets identified. Phase I of these improvements were completed in 1996. The remaining budget for Phase II is approximately $650,000.

The City Engineering Department has developed construction plans for Phase II street and sidewalk improvements on the following streets: Tunnel Road (Sidewalk only) (East); Dellwood Street (West); Evelake Drive (North); Fayetteville Street (West); Hawkins Lane (North); Hi-Alta Avenue (West); Woodland Drive (West); King Arthur Place (North); Percival Court (North); and, Richland Street (West).

The project was advertised for one month. Staff received bids on November 10, 2000. Only one bid was received at this bid opening. The sealed bid was returned to the bidder unopened per City policy. The project was immediately re-advertised for three weeks. The Engineering Department held a second bid opening on November 28, 2000. Two bids were received and opened. The bids were received by Precision Contracting, in the amount of $888,462.00, and APAC in the amount of $1,129,183.51. The engineer's estimate for Phase II, street and sidewalk improvements, was $694,895 for these streets.

Upon examination of the bids, it was determined that the low bidder (Precision Contracting) had failed to include one item in their bid. Precision Contracting had given a unit price for the same type of item as that omitted on a separate portion of the bid tabulation. Upon bringing this discrepancy to the bidders attention the bidder agreed to include the omitted item at the same unit price as that on the separate portion of the bid tabulation. The addition of this discrepancy to the original bid made a total of $902,327. After discussing the discrepancy with Legal staff, it was determined that Precision Contracting was a responsive bidder and that the bid was legal. A tabulation of bids is included with resolution.

Money for this contract is budgeted. The additional funds, other than the $650,000 in the capital budget for this project, are available in the Public Works concrete and resurfacing budgets.

The construction time for this phase of the project is identified as 90 calendar days in the contract documents.

City staff recommends City Council adopt a resolution authorizing the City Manager to sign a contract, in the amount of $902,327, to Precision Contracting for Contract 12 - Phase II street improvements.

RESOLUTION BOOK NO. 26 – PAGE 265

F. RESOLUTION NO. 01-10 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LICENSE AGREEMENT FOR RESIDENTIAL DRIVEWAY IN NORTH FORK AREA

Summary: The consideration of a license agreement authorizing an encroachment in North Fork Watershed.

The applicants, Leigh and Katherine Kimmel represented by Black Mountain attorney Mike Begley, own property adjacent to City property near the North Fork reservoir, but downstream from the spillway. The Kimmels are constructing a residence on their property. In connection with their construction work, they are building a driveway.

There is a fence that has for years been assumed to be located on the common property line between the Kimmels' property and the City's property. A recent survey prepared for the Kimmels reveals that their line stops considerably short of the fence, indicating (a) that the fence is set back within the City's property line, or (b) that there is a gap in the two properties. The actual situation would be difficult to know without a survey of the City's property.

The Kimmels are asking for our agreement to allow for their driveway to encroach on our property (assuming it is ours), while preserving the rights of both parties to verify the ownership through appropriate means and not waiving any defenses to adverse possession. Without doing extensive and expensive research necessary to determine if the City has any interest in the property such that it could convey an easement or some other interest to the Kimmels, the license agreement is the best way to protect and serve the interests of the parties.

The Water Authority's attorneys have reviewed this matter, and concur in the use of the license agreement as the most effective means of addressing the situation.

Adopt a resolution authorizing the Mayor to execute a license agreement allowing the driveway encroachment.

RESOLUTION BOOK NO. 26 – PAGE 267

G. ORDINANCE NO. 2784 - BUDGET AMENDMENT FOR ASSISTANCE FOR INCLUSIVE CHILD CARE AT LITTLE BEAR CARE PROGRAM

Summary: The consideration of a budget amendment, in the amount of $2,326, from Smart Start-Buncombe County Partnership for Children through the Special Needs Assistance Program for assistance for inclusive child care at Little Bear Care Program for extra cost while serving a child with special needs.

The City of Asheville applied to Smart Start for assistance in December 2000 for cost associated with providing extra staff for a child with special needs in Little Bear Care. The allocation was recently awarded in the amount of $2,326, and designated for cost associated with providing extra part-time staff for a child with special needs in Little Bear Care.

The Parks and Recreation Department recommends City Council approve the budget amendment in the amount of $2,326 for cost associated with providing extra part-time staff for a child with special needs in Little Bear Care.

Mr. Kevin Rollins, representative of the Libertarian Party of Buncombe County, said that the Little Bear Care Program is a private organization and should be privately funded.

ORDINANCE BOOK NO. 19 – PAGE 70

H. ORDINANCE NO. 2785 - BUDGET AMENDMENT TO ESTABLISH BUDGETS FOR THE PUBLIC ART MASTER PLAN, PUBLIC ART RESTORATION/ CONSERVATION, AND PUBLIC ART SPECIAL PROJECTS

Summary: The consideration of a budget amendment, in the amount of $37,650, for grant appropriations and City of Asheville Capital Improvement Project (CIP) budget appropriations for the Public Art Master Plan, Public Art Restoration/Conservation, and Public Art Special Projects, all new projects in the Public Art Program.

The City of Asheville applied for funds, and received donations and appropriations in September-November 2000 for three new Public Art Program projects. The allocations were recently awarded, in the amount of $37,650, and designated as described below.

Public Art Master Plan – A budget amendment in the amount of $16,000, including a $3,000 grant from the Community Foundation, a $5,000 grant from the North Carolina Arts Council, and $8,000 match from the City of Asheville CIP budget, to establish a budget for the Public Art Master Plan. Funds will be used to develop a master plan. The $3,000 Community Foundation grant is currently held in Urban Trail account 666-2512-383-3000 CP9911 to be transferred into the new Public Art Master Plan account.

Public Art Restoration/Conservation – A budget amendment in the amount of $13,650, including $1,000 private donation, and $12,650 match from the City of Asheville CIP budget, to establish a budget for restoration and conservation of the City's public art collection. A match of $12,650 is held by the Heritage Preservation in the Save Our Sculpture! 2000 grant program. Funds will be used to repair the sculpture at the Urban Trail's Station 25, Ellington's Dream, and to restore the "Energy Loop", the metal sculpture located in City-County Plaza.

Public Art Special Projects – A budget amendment in the amount of $8,000, including a $4,000 grant from the North Carolina Arts Council, and $4,000 match from the City of Asheville CIP budget, to establish a budget for the Public Art Master Plan. Funds will be used to develop artist selection and the temporary art process in the Revolving Gateway Project.

This is the first year of the City's one percent for public art as allocated in the CIP budget, with $50,000 available for matching funds for public art projects. The above matching funds are available in this account. The Parks and Recreation Department is responsible for the management and operation of the Public Art Program.

The Parks and Recreation Department recommends City Council to approve the budget amendment, in the amount of $37,650, to establish budgets for the Public Art Master Plan, Public Art Restoration/Conservation, and Public Art Special Projects.

Mr. Kevin Rollins, representative of the Libertarian Party of Buncombe County, said if residents want art, they should pay for it themselves and not use City funds.

ORDINANCE BOOK NO. 19 – PAGE 72

130

I. RESOLUTION NO. 01-11 - RESOLUTION AUTHORIZING THE CITY MANAGER AND/OR MAYOR TO APPLY AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF ENVIRONMENT AND NATURAL RESOURCES FOR A GRANT TO ASSIST WITH RENOVATIONS OF THE PARK AT THE BURTON STREET CENTER

Summary: This is the consideration of a resolution authorizing the City to apply for grant funds through the N.C. Dept. of Environment and Natural Resources to assist with the renovation of the park at the Burton Street Center.

Funds are available through the North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation in the North Carolina Parks and Recreation Trust Fund to assist with the development of new parks

The renovation represents the City of Asheville's commitment to maintain and provide recreation facilities and services to the citizens of Asheville. The park serves a number of neighborhoods in the West Asheville area. The improvements will feature a new playground and improvements to the surrounding area.

The Parks and Recreation Department is requesting $50,000 in grant funds from the North Carolina Parks and Recreation Trust Fund which requires a 50% cash match. The cash match is available through funds allocated for the project as a result of the recent tax increase.

The Parks and Recreation Department recommends the City apply for and enter into an agreement for the grant funds through the North Carolina Parks and Recreation Trust Fund to assist with the renovations at the park at Burton Street Center.

RESOLUTION BOOK NO. 26 – PAGE 268

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilwoman Field moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO REZONE PROPERTY LOCATED OFF OF POND ROAD FROM RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT (MANUFACTURED HOME OVERLAY DISTRICT) TO COMMERCIAL INDUSTRIAL DISTRICT

On January 23, 2000, the applicant has requested this public hearing be continued until this date. On January 17, 2000, City staff received a letter from Mr. Dean Pistor (the applicant) advising the City "that PSNC Energy has terminated the Offer to Purchase 16 Pond Rd. The owners of the property must at this time regretfully remove the petition to re-zone the property to commercial industrial. I am continuing to market the property for commercial use and intend to petition the city for re-zoning as soon as a new contract is consummated. I appreciate your support in this re-zoning and feel that the CI zoning for this property is the highest and best use. I look forward to talking with you soon, and I apologize for any inconvenience."

B. PUBLIC HEARING TO INITIALLY ZONE 15 LOTS KNOWN AS BURNSIDE, PHASE 3 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

ORDINANCE NO. 2786 - ORDINANCE TO INITIALLY ZONE 15 LOTS KNOWN AS BURNSIDE, PHASE 3 OF BILTMORE PARK TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:11 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to zone 15 lots known as Burnside Phase 3 at Biltmore Park to RS-4 Residential Single Family Medium Density District. This public hearing was legally advertised on January 12 and 19, 2001.

The Planning and Zoning Commission, at their December 6, 2000, meeting, reviewed and unanimously recommended zoning the recently annexed parcels known Burnside Phase 3 (PIN Nos. 964503217814, 964503312750, 964503311538, 964503314499, 964503313458, 964503227594, 964503226166, 964503229186, 964503320584, 964503321472, 964503320215, 964503320021, 964503217986, 964503310818 and 964503227338) to RS-4 Residential Single Family Medium Density District. The property is located in the Biltmore Park development on Burnside Drive, White Ash Drive, and Bearberry Lane. This is a 15.5 acre area, consisting of 15 parcels, platted and being developed for a single-family residential subdivision. The adjacent property lies within the Biltmore Park development and is being developed with a mixture of uses.

The RS-4 District is designed to establish a medium density residential area for single family dwellings where adequate infrastructure is in place to support the density and to stabilize and protect the residential character of existing neighborhoods while providing for a balanced mix of uses compatible with residential uses. Maximum density is 4 units per acre.

The RS-4 zoning will allow for medium density residential development in accordance with the Biltmore Park master plan, and the dimensions of the platted lots.

The Planning and Zoning Commission and the Planning and Development staff recommend approval of the initial zoning of Burnside Phase 3 of Biltmore Park to RS-4 Residential Single Family Medium Density District.

Mayor Sitnick closed the public hearing at 5:13 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2786. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 76

C. PUBLIC HEARING TO INITIALLY ZONE 5 LOTS KNOWN AS BRAESIDE, SECTION 5 OF BILTMORE PARK TO RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT

ORDINANCE NO. 2787 - ORDINANCE TO INITIALLY ZONE 5 LOTS KNOWN AS BRAESIDE, SECTION 5 OF BILTMORE PARK TO RS-2 RESIDENTIAL SINGLE-FAMILY LOW DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:14 p.m.

132

Urban Planner Paul Benson said that this is the consideration of an ordinance to zone five lots known as Braeside Section 5 at Biltmore Park to RS-2 Residential Single-Family Low Density District. This public hearing was legally advertised on January 12 and 19, 2001.

The Planning and Zoning Commission, at their December 6, 2000, meeting, reviewed and unanimously recommended zoning the recently annexed parcels known Braeside Section 5 (PIN Nos. 964515744624, 964516746581, 964515743405, 964516748370 and 964516746257) to RS-2 Residential Single-Family Low Density District. The property is located in the Biltmore Park development on Braeside Circle, west of Overlook Road. This is a 10.5 acre area, consisting of 5 parcels, platted and being developed for a single-family residential subdivision. The adjacent property lies within the Biltmore Park development and is being developed with a mixture of uses.

The RS-2 District is designed to establish a low density residential area for single family dwellings where adequate infrastructure is in place to support the density and to stabilize and protect the residential character of existing neighborhoods while providing for a balanced mix of uses compatible with residential uses. Maximum density is 2 units per acre.

The RS-2 zoning will allow for low density residential development in accordance with the Biltmore Park master plan, and the dimensions of the platted lots.

The Planning and Zoning Commission and the Planning and Development staff recommends approval of the initial zoning of Braeside Section 5 to RS-2 Residential Single-Family Low Density District.

Mayor Sitnick closed the public hearing at 5:15 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilwoman Field moved for the adoption of Ordinance No. 2787. This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 78

D. PUBLIC HEARING TO INITIALLY ZONE 24 LOTS KNOWN AS OAKBROOK, PHASE 1 OF BILTMORE PARK TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

ORDINANCE NO. 2788 - ORDINANCE TO INITIALLY ZONE 24 LOTS KNOWN AS OAKBROOK, PHASE 1 OF BILTMORE PARK TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:16 p.m.

Urban Planner Paul Benson said that this is the consideration of an ordinance to zone 24 lots known as Oakbrook Phase 1 at Biltmore Park to RS-8 Residential Single-Family High Density District. This public hearing was legally advertised on January 12 and 19, 2001.

The Planning and Zoning Commission, at their December 6, 2000, meeting, reviewed and unanimously recommended zoning the recently annexed parcels known Oakbrook Phase 1 (PIN Nos. 964503124664, 964503126597, 964503123680, 964503122563, 964503121403, 964503126493, 964503124356, 964503123383, 964503123219, 964503122244, 964503120156, 964503112885, 964503114815, 964503114746, 964503121477, 964503112946, 964503125014, 964503126605, 964503115977, 964503125430, 964503124125, 964503122288, 964503121057 and 964503029292) to RS-8 Residential Single-Family High Density District. The property is located in the Biltmore Park development on Schenck Parkway, White Ash Drive, and Rosebay Lane. This is a 12.8 acre area, consisting of 24 parcels, platted and being developed for a single-family residential subdivision. The adjacent property lies within the Biltmore Park development and is being developed with a mixture of uses.

The RS-8 District is designed to establish a high density residential area for single family dwellings where adequate infrastructure is in place to support the density and to stabilize and protect the residential character of existing neighborhoods while providing for a balanced mix of uses compatible with residential uses. Maximum density is 8 units per acre.

The RS-8 zoning will allow for higher density residential development in accordance with the Biltmore Park master plan, and the dimensions of the platted lots.

The Planning and Zoning Commission and the Planning and Development staff recommend approval of the initial zoning of Oakbrook Phase 1 of Biltmore Park to RS-8 Residential Single-Family High Density District.

Mayor Sitnick closed the public hearing at 5:17 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2788. This motion was seconded by Councilman Worley and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 80

E. PUBLIC HEARING TO REZONE A PORTION OF PROPERTY LOCATED ON LEICESTER HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT SO THAT ALL OF THAT LOT IS ZONED COMMUNITY BUSINESS II DISTRICT

ORDINANCE NO. 2789 - ORDINANCE TO REZONE A PORTION OF PROPERTY LOCATED ON LEICESTER HIGHWAY FROM RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT TO COMMUNITY BUSINESS II DISTRICT, EXCEPT FOR A 25 FOOT STRIP ALONG OLD COUNTY HOME ROAD WHICH IS TO REMAIN ZONED RM-6 RESIDENTIAL MULTI-FAMILY LOW DENSITY DISTRICT

Mayor Sitnick opened the public hearing at 5:18 p.m.

Urban Planner Carl Ownbey said that this is the consideration of an ordinance to rezone the remaining portion of a lot on Leicester Highway from RM-6 Residential Multi-Family Low Density District to Community Business II. This public hearing was legally advertised on January 12 and 19, 2001.

The owner of property, Michael Kirkpatrick, is requesting the rezoning of the remaining portion of his property (PIN No. 9629.18-41-0222) from RM-6 Residential Multi-Family Low Density District to Community Business II.

This parcel of land is only one of two lots in the Community Business II District along Leicester Highway that is split-zoned. Currently, the trend for development in this area is toward commercial use. For the owner to develop this land for that purpose and meet the requirements of the Unified Development Ordinance (UDO) (including setbacks, parking, and buffering), more of the property would need to be zoned commercial. There are other properties in the immediate vicinity of the subject property that are zoned commercial with frontage on both Old County Home Road and Leicester Highway. This includes a 5-acre tract of land that was rezoned in 1995 from R-5 Residential to Commercial Service and changed to Community Business II District with the adoption of the UDO.

The Planning and Development staff has discussed the development of this property over the past few months to determine the best zoning classification with minimal impact to the adjacent neighborhood. Staff considered the Conditional Use Rezoning process for this lot and determined that, since the proposed use is permitted in the Community Business II District and that the majority of the lot is already zoned Community Business II District , the most feasible approach would be to rezone the entire lot to Community Business II District.

At the Planning and Zoning Commission meeting, the Commissioners expressed concerns with regard to stormwater run-off from this property and its effect on the neighboring residents. They were concerned that the run-off from the fill needed for this lot to make it accessible from and level with Leicester Highway would have potential negative impacts to the drainage area and the existing flood fringe area immediately west of the lot. There were no public comments at the meeting.

The petitioner explained that the stormwater management of the lot would tie into the N.C. Dept. of Transportation system that connects with Leicester Highway and flows back to Old County Home Road to the existing creek. City floodplain management and erosion control requirements would have to be meet during the development of this property.

Despite assurance from staff that vehicular access could be controlled during site plan review, the Commissioners also expressed concern about vehicular access from the residential street (Old County Home Road). The Commissioners suggested that a strip of land adjacent to the street remaining residentially zoned would prohibit vehicular access to the commercial portion of the lot. The Commissioners agreed that a five-foot strip parallel to Old County Home Road would be sufficient to accomplish this restriction.

Staff followed up on this action by requesting additional site development information from the applicant. He provided staff with an engineering survey indicating that 25 feet of undisturbed land will not be needed for the project and could remain residentially zoned.

The Planning and Zoning Commission reviewed this rezoning request at their January 3, 2001, meeting. The Commission voted 5-2 to recommend approval to rezone the remaining portion of the property on Leicester Highway from RM-6 Residential Multi-Family Low Density District to Community Business II except for a five-foot wide strip along Old County Home Road which would remain RM-6. Based on the data from the engineer's survey, the Planning and Development staff recommends that this strip of land parallel to Old County Home Road be 25 feet wide.

Upon inquiry of Councilwoman Bellamy, Mr. Ownbey explained what types of buffer would be required around the property.

A brief discussion was then held about the five-foot strip remaining RM-6 vs. a twenty-five foot strip remaining RM-6.

Mr. Michael Kirkpatrick, property owner, said that the topography of the lot will prohibit any commercial access from Old County Home Road. He said that he would prefer the entire lot be rezoned Community Business II, but would accept a 5 or even 25 foot strip along Old County Home Road remaining residential.

Mr. Dave Gory felt that this rezoning issue is a tremendous assault on freedom. He stressed that the topography of the area achieves the goal Council is looking to achieve. He felt that to eliminate the zoning ordinance would allow us to have a better society.

Mayor Sitnick closed the public hearing at 5:37 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2789, with a 25 foot strip remaining RM-6 along the portion of Old County Home Road. This motion was seconded by Councilman Peterson and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 82

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. MOTION APPROVING THE ASHEVILLE SISTER CITIES INC. PARTNERSHIP WITH KASTORIA, GREECE

Ms. Bunnie Cabiness, President of Asheville Sister Cities, Inc., requested City Council approve the Asheville Sister Cities, Inc. partnership with Kastoria, Greece.

Since recently losing a Sister City in Kyrgyzstan, the Asheville Sister Cities has been looking for a new partner city. The Search Committee chaired by former Mayor Russ Martin is recommending the City of Kastoria, Greece. Ms. Cabiness then explained the process in looking for a new partner city.

Staff recommends City Council approve the Asheville Sister Cities, Inc. partnership with Kastoria, Greece.

Mr. Joe Ferikes stated that he visited Kastoria, Greece, about three years ago and explained how they are similar to Asheville. He noted that their economy is fur production and they have an agricultural based economy. They are now striving to really build up their tourism industry.

Councilwoman Field explained that Asheville Sister Cities is a private organization but the governments have to agree to the friendships.

Mayor Sitnick noted she was a great supporter of the Sister Cities Program and Asheville has a wonderful Greek community, but personally felt it was hard for her to be in favor of partnering with Kastoria, Greece, because of it's fur production.

Mr. Ferikes noted that the fur industry is in the decline and if they can improve their tourism industry, they can eliminate some of the things that might be objectionable to others.

Councilman Hay noted that this relationship is city government to city government and people to people. The paring is not an endorsement by city government of the community.

Councilman Worley moved to approve the Asheville Sister Cities Inc. partnership with Kastoria, Greece. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

B. RESOLUTION NO. 01-12 – RESOLUTION AUTHORIZING THE PURCHASE OF 155 ACRES ON AZALEA ROAD

ORDINANCE NO. 2789 - BUDGET AMENDMENT TO BE USED TOWARD THE DEVELOPMENT OF A MASTER PLAN FOR THE AZALEA ROAD DEVELOPMENT AND THE FIRST YEAR PAYMENT FOR THE PURCHASE OF THE PROPERTY

Parks and Recreation Director Irby Brinson said that this is the consideration of a resolution authorizing the purchase of 155 acres on Azalea Road for the development of a recreation facility and a beneficial fill/composting site and approving an associated budget amendment, in the amount of $166,327.

City Council directed the Parks and Recreation Department to proceed with the necessary steps to acquire the Lake Craig and Azalea Road Park properties. Direction included the completion of a Feasibility Study to determine whether the purchase of the property was viable for use as a park and beneficial fill site.

For several years, the Parks and Recreation Department has investigated the purchase of the property located on Azalea Road as a future site for recreation. During this process, staff was approached by the Public Works Department about partnering in this project to include adding a beneficial fill and composting site. A total of 155 acres has been identified as part of this project. On June 13, 2000, City Council approved entering into a contract with Woolpert LLP to complete a Feasibility Study regarding purchase of the property for both recreation and beneficial fill/composting site. The scope of services included in Woolpert's contract contained an analysis of the flood plain/floodway regulations, wetland review, utility investigation, traffic impact analysis, beneficial fill investigation and cost of benefit analysis. Based upon the completion of the Feasibility Study, Woolpert has determined that there are no negative circumstances or issues surrounding the purchase of this property and recommends that the City of Asheville purchase the 155 acres to be used as a recreation and beneficial fill/composting site.

City staff and the consultant have worked together with a task team of representatives from the east Asheville community along with other interested user groups. Several meetings have occurred over the past 1 ½ years to solicit input in this process. Throughout these discussions, the City staff has maintained its original direction by City Council which was to determine the feasibility of the purchase of this property. The results of this decision have been based upon the recommendations from the consultant regarding the above issues which were predetermined by the task force as being the most important issues to be addressed.

Also included in this staff report is a budget amendment appropriating funds from the Public Works Department totaling $166,327 which will be combined with existing capital funds in the Parks and Recreation budget for this project. The total balance available for the project represents $314,624. These funds will be used to develop a master plan for the site and to make the first year payment for purchase of the property.

City staff recommends that City Council approve proceeding with the purchase of the 155 acres and to negotiate the best price possible with the two property owners based upon options which were signed with them in March of 1999. Staff also recommends approval of the budget amendment appropriating $166,327 from Public Works Department's budget to current CIP in Parks and Recreation.

Mr. Doug Jewell, member of the Evaluation Team, briefly explained the project purpose of the City considering purchasing an approximate 155 acre tract of land for a community park and beneficial fill and composting mulch location. The designated uses should be compatible with adjoining properties, environmentally safe, and not cause significant impact to the natural resources. The Evaluation Team (which he identified) is to assist the City in making a Go/No Go decision regarding the purchase of the property considering six technical factors. He explained the site context and the existing land uses, which include agriculture, an historic site, horse facility, material disposal, lakes, woods, sand/gravel mining and equipment maintenance/storage.

The first technical factor he reviewed was the floodplain/floodway regulations. The findings include that the 100-year floodplain occupies virtually all the flat lowlands, floodplain will hold water periodically impacting use, and regulated floodway along Swannanoa River. The conclusions/recommendations include (1) active and passive recreation can occur within the floodway, but filling is restricted; (2) structures and beneficial fill areas must be elevated above the 100-year flood; and (3) additional study required to alter the floodway downstream of disposal mound. The summary of the floodplain/floodway regulation is (1) site is feasible for a community park and beneficial fill location; (2) restrictions on the siting of facilities can be accommodated; (3) parks are commonly located within floodplains and floodways; and (4) must keep buildings, structures, and beneficial fill location out of the regulated floodway.

The second technical factor he reviewed was the wetland review. The findings include that vegetated wetlands exist on southern portions of the site, ponds and river are regulated by the Environmental Protection Agency and the N.C. Dept. of Environment and Natural Resources, and wetlands to be certified by state and federal regulations. The conclusions/recommendations include (1) wetlands should be preserved as open space (no development); (2) wetlands offer opportunity for environmental education; and (3) permitting will be necessary if wetlands are impacted. The summary of the wetland review is: (1) site is feasible for community park and beneficial fill location; (2) haul roads to the beneficial fill site will need to avoid the wetlands; (3) wetlands are community incorporated into parks as features; and (4) wetlands are located along the perimeter of the site and should not severely restrict facility layout.

The third technical factor he reviewed was the utility investigations. The utilities include sanitary sewer, telephone, electric, water and natural gas. The findings include sanitary sewer along Azalea Road, electric transmission lines on the south portion of the property, underground power is minimal, telephone serves existing buildings, no water service along Azalea Road and no natural gas along Azalea Road. The conclusions/recommendations include (1) sanitary sewer service is available; (2) electric service is available; (3) telephone service is available; (4) water service possible from Oteen Church Road; (5) natural gas service is not likely; and (6) transmission line relocation is costly. The summary of the utility investigations are: (1) site is feasible for a community park and beneficial fill location; (2) beneficial fill can be accommodated with little impact to utilities; and (3) park development can be served reasonably with utilities.

The fourth technical factor he reviewed was the traffic impact analysis. The findings include (1) no impact on signalized intersections; (2) delay increases at Azalea/Swannanoa; (3) other issues: (a) no left turn lane on Swannanoa at Azalea; (b) left land turn on Tunnel at Azalea; (c) sight distance problem for left turns from Swannanoa to Azalea; and (d) cut-through potential - 86 vehicles in each direction in peak hour. The findings include issues such as (1) width, curvature, and sight distance along Azalea – acceptable as a local access street; (2) access for cyclist in both directions and for emergency vehicles needed from both ends of Azalea; and (3) short off-set between Azalea and Lower Grassy Branch at Tunnel Road. The conclusions/recommendations include two primary alternatives: (1) Close Azalea Road to through traffic - (a) leave Azalea Road open to cyclists and emergency vehicles; and (b) future aligning Azalea Road with Lower Grassy Branch and add right turn lane to Azalea Road at Tunnel Road; and (2) keep Azalea Road open at Swannanoa - (a) potential cut-through in adjacent neighborhood (b) add left turn lane on Swannanoa; (c) improve left turn sight distance from Swannanoa; and (d) add right turn lane on Azalea at Swannanoa if needed in future. The summary of the traffic impact analysis summary is: (1) site feasibility for community park and beneficial fill location; (2) Woolpert recommends Alternative 1 – Closing Azalea near Swannanoa to vehicle traffic; and (3) address speed limit, speed humps, sight distance along Azalea in design phase.

The fifth technical factor he reviewed was the beneficial fill. The findings include that fill began with construction of I-40 in 1963, before floodplain regulations; some minor dumping requiring clean-up; previous dumping violations per state (N.C. Dept. of Environment and Natural Resources); no current violations; and minor failure cracks along existing fill slope. The conclusions/recommendations include: (1) beneficial fill and composting/mulching can occur on-site at designated mound area; (2) beneficial fill located south of electric power right-of-way on approximately 5 acres; (3) composting/mulching located north of electric power right-of-way; (4) potential volume of fill over a 14-year period is 251,000 tons; and (5) general design requirements: (a) no wetland impacts; (b) not allowed in the 100-year floodway or floodplain; (c) no impact to historical sites; (d) no impact to endangered species; (e) E&SC plan required; and (f) visual screening from the parkway. The beneficial fill summary is (1) site is feasible for a beneficial fill and composting/mulch location; (2) site can meet state requirements; (3) site meets Public Works volume requirements; and (4) initial access to site across existing bridge – future access on new bridge.

The sixth and final technical factor he reviewed was the cost-benefit analysis. The findings and observations show that the projected annual operating cost of using beneficial fill location (current dollars) totals $229,200, whereas, the projected annual operating cost using the County landfill (current dollars) totals $659,400. The conclusions/recommendations include: (1) cost/benefit analysis shows the Azalea Road site is more advantageous than using County landfill; and (2) potential annual savings (a) $430,200; and (b) City breaks even on entire site in less than four years. The cost-benefit analysis summary is (1) site is feasible and economically advantageous as a beneficial fill location; and (2) savings can be applied to the overall financial equation of the entire project.

The final study summary is that based on the six technical factors, the Evaluation Team unanimously recommends that the City purchase the property for a community park and beneficial fill location.

The Task Force has had two meetings with the community, seven hours of discussion and answered approximately 300 questions. He responded to the primary Task Force issues which questions included: will development of the site increase flooding, will development of the site impact water quality, will development of the site make traffic worse, is the City buying an environmental problem with the disposal site, is the disposal site stable and safe, will beneficial fill create an eyesore, will composting/mulching create objectionable smells and noise, and will site development lower property values.

If the City does not buy the site (1) the disposal site will likely be purchased by a commercial fill operation and the City may have to pay tipping fees; (2) much of the site will likely be developed as single and multi-family residential; (3) no protection for the Swannanoa River; and (4) the City will lose a prime City park location.

Vice-Mayor Cloninger said that a flyer has been distributed which contains inaccurate information. He requested the consultant and staff to respond to those allegations.

Flyer: The City is planning to spend $18 million to buy 155 acres on Azalea Road.
Fact: The purchase price for the 155 acres is 1,775,000 for the 155 acres.

Flyer: The City is planning to spend $18 million to buy 155 acres on Azalea Road (zoned single family residential) for ...

Fact: The bottom land portions of the site are primarily zoned RS-2, the lower southwest corner is RS-4, and the mountainside is zoned RM-8

Flyer: Public Works is purchasing 25 acres to put an inert DUMP on top of an un-stabilized, un-lined landfill, contents unknown, which may pose flooding and water quality hazards.

Fact: The beneficial fill will occur above the flood elevation and would not have any impact on the flooding issue on the site. Inert fill consists of asphalt, concrete, rock, clay and soil. The material is known in the existing fill area as 8 test bore holes were conducted and no hazardous materials were found. In general, we are confident that we know what is in there – concrete rubble, boulders, sand, gravel, asphalt, stumps, other wood products, sheet rock and other building materials, rusty steel and other steel structure material, old pipes. There are cracks along the existing fill area, which can be stabilized by correct sloping of the sides. The proposed beneficial fill site proposed is not required to be lined landfill. With regard to water quality, there would have to be monitoring around the composting facility but the beneficial fill site does not require water quality monitoring An erosion and sedimentation control plan would be necessary for the entire site.

Flyer: Wood/Brush Chipping operation which sounds like a non-stop ambulance siren all day long.

Fact: Although a tub-grinder is noisy, it is anticipated that the grinder would run approximately 3-4 days per quarter per year. If a private developer purchased this property for commercial brush, the grinder could go on for days.

Flyer: Composting with strong odors and respiratory allergens.

Fact: This location is approximately 1/3 to 1/4 mile away from most living areas. In addition, there are buffering requirements for a compost facility, one of which is that a 500 foot minimum buffer is required between the compost area and residences or dwellings not owned or occupied by the permitee. The composting facility is an optional proposed use for this property.

Flyer: Heavy equipment operating and 25 big, loud trucks (inert and composting) past your door.

Fact: 16,800 tons of inert material is produced by the City each year, averaging 323 tons per week. The feasibility study estimates about 10 trucks per day will access the inert fill area. The study did not estimate the number of trucks that would carry the composting material.

Flyer: 7 tournament soccer fields for people of SC, TN, GA, VA and more. These fields are probably not for city recreational use as the city is giving away 70 acres of land to a regional tournament soccer organization who will construct, maintain and control them.

Fact: There will be 4 fields for regulation play. These fields will not only be for tournaments for league play, but also for regular season play. There will be, on occasion, tournament play on some weekends.

Flyer: 400 or more cars per hour will come through our neighborhoods.

Fact: During the peak activity during soccer, it would be approximately 50 trips per hour per field would equal 197 trips per hour. During weekdays that activity would be reduced.

Mayor Sitnick said what has been alleged to be in there is non-permitted solid waste of asphalt, concrete, glue, petrol fuel products, particle board, hospital debris, dead cows, tires, plumbing material, construction debris, etc. Mr. Jewell said that the N.C. Dept. of Environment and Natural Resources (DENR) has had the regulated material that was objectionable fixed – either removed or remediated on site. It has been corrected to DENR's satisfaction.

140

Mr. Mike Connor, engineer on the evaluation team, said that the petroleum mentioned on the site was a permitted land farming petroleum contaminated soil by the N.C. Dept. of Transportation when the I-40/Sweeten Creek Road interchange was construction. They applied to DENR and received approval to dispose of that on site. This was very low level petroleum material.

Councilman Peterson asked if the wood/brush chips would be made available to the public. And, if so, were the number of cars and trucks coming to pick up the chips included in the evaluation? Public Works Director Mark Combs said that the chips would be made available to the public. If we speculate on issues related to the potential to put a grinding site, we have 3 trucks and we fill them up about 3 times a day, 4 days a week – about 9 trips per day. We also have 2 sway cars and those would constitute about 2 loads per day – about 4 trips per day four days a week.

Councilman Peterson asked if the leaf composting pile from Broadway would be moved to the Azalea Road location. Mr. Combs said that they have not done any significant planning for this particular site for all of the leaf composting. He noted there is a high demand for that leaf material in the Montford area and they would probably like the City to leave something like that there for them. Despite of the trucks in the area, they have received no complaints as long as that leaf site has been in there – no smell, allergens.

Ms. Gaye Sprague, traffic engineer on the evaluation team, responded to a question from Councilwoman Bellamy about the level of service at the intersection of Azalea road and Swannanoa River Road, noting that unsignalized intersections are not assigned a level of service.

With regard to a question from Councilman Peterson, Mr. Gary Stewart, Project Manager for the evaluation team, said that to repair the existing bridge on the east side of the Parkway would be approximately $150,000. The estimated cost to design, permit and construct a new bridge which would be downstream of the existing disposal mound is estimated to be $300-500,000. He noted that when the beneficial fill process is complete, that disposal mound would be graded and become part of the park. Therefore, the new bridge would be designed to serve both the lowlands on the south side of the river as well as the disposal mound on the south side of the river.

Mr. Stewart answered various questions from Councilman Peterson regarding the disposal mound. He estimated it would cost approximately $15,000 a year over the life of the project to remove some of the steepness of the slope and stabilize it.

Mr. Richard Grant, Solid Waste Manager, responded to questions from Councilman Peterson regarding recyclable material going to the Buncombe County Landfill ($32/ton) vs. Grovestone ($7.50/ton for separated loads and $15.00/ton for mixed loads). He said that asphalt and concrete can be recycled at Grovestone for $7.50/ton. There is about 16,800 tons of material that is generated each year and we still have 10,000 tons of material left over that has to be put in an inert fill area. If we were to do that, we would incur additional cost to transport the material to Grovestone, the separation process, and the disposal fee.

Councilman Hay stated that the decision before City Council today is whether to buy the land or not. It's not an approval of the plan for the park or the plan for the beneficial fill site. In anticipation of why we want to buy the land, we have taken those things into account. But, by voting for or against the land purchase, we are not necessarily pronouncing judgement over either of the proposed uses of the land. City Manager Westbrook agreed stating that there would be future actions required by the Council both in terms of the budget, contractual obligations, and probably other things having to do with the state.

Councilman Hay asked if the City does purchase the land and chooses not to use it for a beneficial fill, can the 25 acres be used for something else. Mr. Stewart said that it could be used toward passive recreation.

Councilman Hay and Councilwoman Field questioned Ms. Sprague about cut-through traffic and her summary of the traffic impact analysis. Ms. Sprague did note that her analysis was based on seven soccer fields.

When Councilman Worley asked what impact flooding would have on soccer fields, Mr. Brinson said it is common practice across the country that recreation use (not buildings or items that would generate a lot of property damage or loss) in a floodplain is the perfect use for it. He said the City has a number of parks in the floodway and his experience has been that the clean-up has been minimal.

Councilman Peterson asked if there were any appraisals of the parcels. Mr. Ed Vess, Rehab and Real Estate Coordinator, said that all of the property in the outlined area is to be purchased, except for one piece of property owned by Mr. Mabe. His plan is to get an appraisal on the Mabe property and, with Council's approval, approach Mr. Mabe about purchasing it. The three tracts proposed to be purchased are as follows: the floodplain area - $659,585; the beneficial fill area - $365,000; and the mountain area (with the historic site) - $620,500. The appraisals are as follows: the floodplain area - $700,000; the beneficial fill area - $385,000; and the mountain area (with the historic site) - $673,000. The appraisals on each tract were in excess of the amount that the City has agreed to buy them for.

At 7:30 p.m., Mayor Sitnick announced a short break.

The following residents spoke in favor of purchasing the property for recreational use for several reasons, some being but are not limited to: ideal site for needed soccer fields; criteria of area makes it unique because it's large, central, flat, clear, has good drainage and is ready to be developed; it's common to develop floodplains for soccer fields; there is a desperate need for soccer fields with 3,300 registered players; signal light is needed for left turn lane on Tunnel Road onto Azalea Road; Azalea Road is narrow and very windy and not wide enough to handle big trucks; cost of property seems high; instead of a beneficial fill the City should lease it back and make it into some kind of organic farm; park must be developed properly being sensitive to traffic and noise issues; if developed property this area could become a major recreational and scenic asset and reflect a commitment to the best in environmental protection; Clean Water Fund of NC is opposed to forcing sedimentation and compacted waste in to the Swannanoa River by adding fill of any kind on top of an already unstable dump site; Clean Water Fund of NC is opposed to the use of any portion of the property in or out of the flood zone which for maintenance purposes would require the use and/or application of toxic herbicides, pesticides, and/or any other such substances harmless to the river and ground water tables; children in Asheville need a place to pay soccer; the area is naturally contiguous with an existing park infrastructure defined by the pristine Swannanoa River; soccer fields allow a more intensive use than passive greenspace but they lend to minimal expense; there is no other land left in the City that would even come close to match this as a community park; this is an important link along the Swannanoa River for a greenway identified in our Greenway Master Plan; this would be an opportunity for trails in wooded sections, picnic areas and hiking; noise from I-40 greatly exceed noise from a tub-grinder; composting of leaves is not an odor producing process; this can achieve a goal to increase recreational opportunities in Haw Creek and east Asheville; and the land acquisition is a demonstration of foresight on the part of City Council:

Mr. Tom Donoho, adjoining property owner
Mr. Lloyd Sigmon, President of the WNC Soccer Foundation Inc.
Mr. Bob Somerville, representing the Asheville-Buncombe Youth Soccer Association

A resident on Azalea Road
Mr. David Herbert, representing the Clean Water Fund of North Carolina
Mr. Greg Sherwood, soccer lover (submitted a picture)
Mr. Gerry Hardesty
Mr. Chris Pelly, President of the Haw Creek Community Association but speaking on behalf of himself
Mr. Gabriel Ferrari, 22 Sulphur Springs Road

The following residents spoke in opposition of purchasing the property, for several reasons, some being, but are not limited to: the purchase price is too high; traffic on Azalea Road will increase; the land is only good for farm and agricultural use; Azalea Road is a winding country lane with hairpin turns and barely enough room for two passing cars; Azalea Road has no shoulders in many areas; Azalea Road has one unsignalized intersection on Swannanoa River Road and one unsignalized intersection on US 70; both intersections are extremely dangerous with limited site lines that make a left hand turn difficult and hazardous; City will have to abide by several federal or state regulations including the Federal Clean Water Act, Rivers and Harbors Appropriation Act of 1899, Federal Agricultural Improvement & Reform Act of 1996, Clean Air Act, Endangered Species Act, Safe Drinking Water Act, National Environmental Policy Act and Comprehensive Environmental Response, Compensation, and Liability Act; there are more than five wildlife species known to be at risk in this area; toxic loads over the permit limits amount to over 20%; the area is considered to have a moderate level of wetland loss and the proposed project would make it a high level of loss wetland; preliminary testing on the mound for any toxins should be done; noise from tub-grinder; a dump will be located in a residential area; dust and air pollution; odor from dump will travel; City will have to invest a lot of money to improve Azalea Road; property values will drop before they eventually start to go up again; it will be hard for City children to use the soccer fields unless they are in an organized league; maintenance of the soccer field would be high; economic forecast is a definite slowdown and how will it impact Asheville; concern that Fund Balance was below City's goal; where is the money going to come from to renovate or replace the Civic Center; and the property is not developable and the City should look for other options:

Mr. Frank Hanke, resident in View Pointe
Mr. John Granados, 26 Overbrook Place (submitted a statement)
Mr. Alan Williams, resident in View Pointe
Mr. Herb Gallinger, resident of View Pointe
Ms. Davis, resident of Beverly Hills
Mr. Adam Balus, Montford resident

The following residents spoke in opposition of purchasing the property for a beneficial land fill for several reasons, some being, but are not limited to: the cost benefit analysis does not include a lot of the costs; residents should be actively involved in planning the development of this site without discrimination of use, the landfill contains much organic material and could not be classified as "inert" fill; there are large voids throughout the fill that may cause areas to collapse; proximity of the fill to the Swannanoa River and the railroad heightens the consequences of a landslide, threatening public safety; no analysis made to determine the presence of toxins and biohazards in core samples; recycling options were not considered in the cost benefit analysis; extensive route modifications needed on Swannanoa River Road and Azalea Road would be needed; additional trucks entering Azalea Road from Tunnel Road would create congestion and pose a safety issue; high cost of a new bridge for large trucks to gain access to the proposed landfill; closing either end of Azalea Road will cause inconvenience to local residents; significant burden to taxpayers for required infrastructure improvements; numerous permits would be required that could mire the project in environmental litigation for may years; availability of proposed soccer fields for the use by all City residents is questionable; City of Asheville should own and maintain soccer fields; RiverLink, WNC Soccer and WNC Youth Sports entered into an agreement with the City that gives them preferential use of these properties; landfill operation would preclude the development of a passive nature park for many years; FEMA regulations must be followed; boring holes did not go to the bottom of the fill; this area is not a suitable site for this use; there is illegal dumping on this site; site is more than double it's worth; four major criteria must be met according to state law for a beneficial fill and they are not being met; asphalt is not beneficial fill; a 40' mound next to a railroad will not improve land use; fill material should not require excavation but it must be done to stabilize the mound slopes; fill activity must comply with zoning restrictions; this activity is not allowed in the Unified Development Ordinance; this commercial-like activity should not be allowed on single-family residentially zoned land; the core sample report was not analyzed and included in the feasibility study; why does the City want to buy an existing dump which could possibly have hazardous or toxic materials; the City is purchasing a liability; other alternatives to inert waste and grinding facility should be investigated; since the City owns 242 parcels of land, they should investigate locating a beneficial fill on one of those parcels; numbers in feasibility report appear to be randomly generated to work in favor of using Azalea Road; no environmental impact statement; concern of a leaf composter and wood grinder adjacent to a river and residential area; compaction of the land for a large parking area will destroy the purpose of the aquafer, which serves to cleanse the water of any impurities; run-off from the road, which is next to the river, will increase toxic runoff directly into the river; and no public input:

Mr. Peter Fisher
Mr. Brian McKenna, President of the Beverly Hills Homeowners Association (submitted a statement)
Mr. Robert Borne, resident of View Pointe
Ms. Rebecca Campbell, representing Southeast Network for Intentional Communities (submitted a statement)
Mr. Chris McKenna, representing Community Support of Development (submitted a statement)
Representative of Save our Swannanoa (submitted a statement)
Mr. Ned Guttman, resident of east Asheville
Ms. Deborah McKenna, resident in Beverly Hills (submitted a statement)

Mayor Sitnick noted that the City of Asheville has not rushed into looking at the purchase of this property. It first began in 1990 – 11 years ago.

City Manager Westbrook, responding to an earlier comment, said that the City is in good financial condition. The report to Council was that fund balance was not growing as fast as we would like to see it grow in view of our expenditure growth last year with some of the special projects we were trying to do. But both fund balance and the City's overall financial position is excellent.

Upon inquiry of Councilwoman Bellamy about where the funding for this would come from, City Manager Westbrook said that there is $314, 624 in the budget for this project which will be used to develop a master plan for the site and to make the first year payment for purchase of the property. The development of the soccer complex is a public/private partnership and other parts of the park will be developed as money becomes available. We do have 2-cents set aside for parks and recreation, which is an alternative for the future, but now we are spending those funds on an annual basis.

City Attorney Oast said that what is before City Council is a resolution authorizing the City to proceed with the purchase (not specify uses) of 155 acres on Azalea Road, subject to the options that are in place. There are several conditions in all of the options and we would assure ourselves that those conditions are satisfied before the purchase takes place. We have been in the process of doing that for approximately the last three years. The second item before Council is a budget amendment to make the appropriation necessary to make the initial payment for the purchase of the property.

Councilman Peterson asked what the process would be to decide on the uses of the property. City Manager Westbrook said that over the next year or so City staff will bring parks and recreation uses to the City Council and hopefully, at an appropriate time, sign an agreement with the soccer people for a public/private development. He also said that before we are ready to establish a beneficial landfill, there would be an appropriation in the budget or a special appropriation to move forward, along with some resolutions which City Council will need to adopt to move forward in that area. Vice-Mayor Cloninger also said there will be a Master Plan process to get substantial public input so that people who have concerns and ideas about the ultimate use of the property will have plenty of opportunities in the future to make their feelings heard.

Councilman Worley said that this issue has been in front of him, as a member of City Council, since 1991 and it is a wonderful resource in the City of Asheville. He felt this is an ideal site for the City to acquire for future generations. He felt we would be derelict in our duty if we did not purchase this property in order to look after the well-being of our citizens. Money is always a concern but we need to find a way to make the purchase and do the development because five years from now the value of the property will be even higher.

Councilman Peterson agreed that the City needs to purchase the property, even if we ultimately decide not to use part of the property for a landfill. His concern would be if we don't purchase that part of the property, we will not be able to protect it. He does have great concerns both about the safety and the financial feasibility concerns of building new bridges, etc. But he did think we should purchase the property and then figure out what to do with it.

Councilwoman Bellamy said that she has met with residents of the east community and different neighborhood associations and they raised a lot of good questions and provided a lot of good information, making sure City Council has clear and concise information. She has been diligent in reviewing all the material provided in addition to walking the site and asking specific questions. When, and if, City Council gets to the point of talking about the landfill on that site, we will address a lot of the questions and concerns raised. After talking with people and reviewing all the information presented, she feels confident that the City does need to purchase the property – if for nothing else, but to protect it from other things that could happen to this land.

Councilman Hay said this has been going on for a long time and it's one of those good ideas we are finally getting something done. One of the frustrations is here is that the City used to own this property in the 1920's and then when they abandoned it, it reverted back to the owners - now we're having to buy it. It's always been City park property for the last 100 years. What the City ends up doing with the property remains to be seen, but he did know that we need to buy it and use it for some type of park activity. Acquiring the fill site is not a mistake and if we decide not to use it for that, we may decide we're glad to have it for something else because it does protect our park land.

Councilwoman Field said there were a lot of issues raised and she would like to see the consultants or staff report back to Council to clear up those issues, especially the environmental concerns. She said it does make sense to move forward and purchase the property.

Vice-Mayor Cloninger supported purchasing the property. When it comes to recreational needs, we are failing the needs of the children of our community. We will do better if we acquire this property, convert it into soccer fields and other uses that children can enjoy. He was confident that through the master planning we can bring the community together and come up with a variety of uses for the property that most people will feel comfortable with.

Mayor Sitnick said that if the City doesn't own this property and a private developer buys it and wants to put a landfill on it, there is no opportunity for public input. She would rather have that opportunity than not. Having been an environmental activist years, she believes there has been major abuses on that property in years past. She asked City staff to continue to look at those reports and get some information from DENR. She would be interested in finding out what was there, what was cleaned up, how things were remediated, etc. so that we are better informed when it comes to future dialog on that issue. She appreciated staff's ability, past performance and current willingness to work with the public on their input for what goes on in that park. She supported cities providing parks and children paying sports. She supported purchasing the park and look forward to seeing it evolve into something that we can all enjoy.

Councilman Worley moved to adopt Resolution No. 01-12, authorizing the purchase of 155 acres on Azalea Road. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 269

Councilman Hay moved to adopt Ordinance No. 2789. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 84

VI. OTHER BUSINESS:

A. BUNCOMBE COUNTY SATELLITE JAIL FACILITY

Vice-Mayor Cloninger said that he would like to discuss the issue of the County satellite jail issue. The county staff is set to meet with the Downtown Commission representatives, key stakeholders and City staff later this week and he hopes that this effort will result in a new location suitable for the County, other than the proposed site at the Union Storage Building.

In addition to the public concerns about the location of the jail facility, there is also a concern that the jail will not blend in the architecture and streetscape of the neighborhood in the event that it is located on South Lexington. I know we have a mandatory review, voluntary compliance design review process in this area, but he was interested in whether a majority of Council is interested in pursuing something that will have some teeth into it.

He would like for us to have some control over some of the operational aspects of the jail, as well. Things like where the drop-off areas are, the type of signage, and drop-off and pick-up times.

The best way to approach these issues is through amending the Unified Development Ordinance (UDO) regarding the conditional use permit process. He'd like to see Council move forward soon, before the County has a chance to purchase the Lexington Avenue property so we will protect our ability to use this review process on Lexington. He also asked the City Manager to send a message to the County Manager that we will be pursuing this approach to ensure that we have a say in how such facilities are developed in our downtown area.

He also asked if there was a consensus for staff to negotiate aggressively with the County staff in an effort to see if there are other properties in the general City-County Plaza area that we might discuss selling or exchanging with the County.

146

Because Councilman Hay owns property across the street, Vice-Mayor Cloninger moved to excuse Councilman Hay from this issue due to a conflict of interest. This motion was seconded by Councilwoman Field and carried unanimously.

Chief Planner Gerald Green said that the conditional use approach is certainly the most appropriate way to handle this type of issue. It will give City Council the discretion to set standards for design, operational standards, etc., but also provide an opportunity for public comment and public input during the information gathering and decision-making process. Staff can have an amendment before the Planning & Zoning Commission at their February 7, 2001, meeting and City Council can hold their public hearing on February 13, 2001.

When Councilwoman Field asked if the UDO provides for any kind of control over lighting around the building, Mr. Green responded that it does not.

City Attorney Oast said that there is a provision in the Code that allows City Council to initiate text amendments and that is what Vice-Mayor Cloninger is suggesting.

Vice-Mayor Cloninger said that if there is consensus on these two actions, we would be sending a message to the County – (1) City Council wants some say-so in what is located in the Union Storage Building and how it's located there in the event they proceed at that site; and (2) City Council is anxious to work with them to try to find an alternative site if possible.

City Attorney Oast pointed out that this text amendment would not be just for the Union Storage Building, but the appropriateness of these kinds of controls for these types of facilities throughout the downtown area.

Chief Planner Gerald Green suggested the text amendment be to amend the UDO identifying jails and related correctional facilities as conditional uses in the Central Business District, Regional Business District and the Commercial Industrial District and establishing standards for these uses. He explained that these facilities are permitted in those districts, but without any conditions or standards.

Councilman Peterson felt that since something is coming that we don't like and the County has already looked into it, that City Council is reacting. He said it's the County's responsibility to provide jail space and he wouldn't want the City to get into saying we're going to decide where you can put it or not. Mr. Green responded that this will only allow the City to have input on those issues which are critical in any location – design, operational standards, and to provide a forum for those affected by the proposal to have input. As with any conditional use permit, based upon appropriate findings, City Council could say they are not going to issue the County a conditional use permit for that location.

Vice-Mayor Cloninger felt that part of City Council's job is to represent the interests of the people who work and live downtown and who have invested literally millions of dollars in the downtown area. All of us on Council have heard from those people that they are very concerned about this issue. He felt we would be shirking our responsibilities if we didn't try to institute some method by which we could have review of this project. Again, at the same time we pursue this track, we will also pursue the track of not being in an adversarial position, but simply trying to protect the interests of the people downtown and the people of the City at large. He felt strongly in trying to negotiate with the County on some other property.

Councilwoman Field said there are a whole lot of people in downtown who have struggled for years to get where they are. She suggested staff ask the County to look carefully at the Black Mountain Correctional Center for Woman because they already do a work release

147

program and already have food service facilities on the campus. There may be ways to work with them to solve their problem.

Mayor Sitnick pointed out that the Asheville taxpayer is a Buncombe County taxpayer and she doesn't see it as protecting our people against the County. She sees it as working with Asheville residents who also live in the County.

Councilwoman Bellamy felt the conditional use permit is a good idea that should be investigated. She noted that the developers in downtown and the Downtown Commission were pretty vocal about not wanting the satellite facility over on the corner of Hilliard and Lexington. She has talked with the East End neighborhood and they would like their voice to be heard as well. They already have the Public Works building, Parks and Recreation, Water Department, a lot of governmental facilities in their neighborhood and enough is enough. Even though they didn't invest millions in their neighborhood, their homes are their treasures. Let's keep their treasures in the forefront when City staff talks about possibly moving the satellite jail facility right behind City Hall because they don't want it there.

Councilman Peterson wanted to remind staff all of the efforts to revitalize the Eagle-Market Street area and didn't want to do anything to harm those development efforts.

Councilwoman Field said that it was clear that the Downtown Commission, and others she has talked to, are totally aware that we need to have the satellite jail facility and all they asked of the County was two weeks to work with them so they could find a more appropriate site in downtown than the one they had picked.

Vice-Mayor Cloninger moved to direct City staff to begin the UDO amendment process and also to direct staff to aggressively negotiate with the County about some alternative site for the satellite jail. This motion was seconded by Councilwoman Field and carried unanimously.

Councilwoman Field moved to set a public hearing on February 13, 2001, to consider amending the UDO identifying jails and related correctional facilities as conditional uses in the Central Business District, Regional Business District and the Commercial Industrial District and establishing standards for these uses. This motion was seconded by Councilman Worley and carried unanimously.

B. TRANSIT CENTER

Mayor Sitnick asked City staff to investigate putting up wind-shields or some type of plastic to block the winds at the Transit Center.

C. CIVIC CENTER COMMISSION

Councilman Peterson said that he talked with Dr. Carl Mumpower, Chair of the Civic Center Commission, who reminded City Council that they are willing to help City Council with any matters regarding the Civic Center.

D. MAYOR'S COMMITTEE ON (DIS)ABILITIES

Mayor Sitnick said that she will appoint a Mayor's Committee on (Dis)Abilities at the February 13, 20001, formal meeting. This advocacy group will work with the ADA, but will mostly be pro-active working with citizens and tourists with disabilities. She felt this will allow the community to have a great opportunity to learn about people in our City living with disabilities and being more sensitive to their needs.

148

E. LAWSUITS

The City was served with a Notice of Charge of Discrimination on January 10, 2001, in the matter of James T. Keefer. The nature of proceeding is race, disability and retaliation charge against the City of Asheville. This matter will be handled in-house.

The City was served with a Complaint on January 12, 2001, in the matter to Joseph Boerner, etc (Police Department employees). The nature of proceeding is denying a 5% or 10% increase in pay. This matter will be handled in-house.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY GABRIEL FERRARI

Mr. Gabriel Ferrari said that he is encountering a problem in the Planning and Zoning Department in developing his property. City Manager Westbrook gave Mr. Ferrari the name and phone number of the Planning & Development Director Scott Shuford who he felt sure would be able to give Mr. Ferrari some assistance.

B. COMMENTS BY DAN WATERMAN REGARDING A COMMUNITY BASED COMMITTEE TO STUDY THE APPLICATION AND EFFECTS OF MARIJUANA LAWS IN OUR COMMUNITY

Mr. Dan Waterman, speaking on behalf of North Carolina Hemp, read the following resolution in which he requested City Council to adopt: "Whereas, we, citizens of Asheville, have come to the belief that the laws criminalizing Cannabis hemp (i.e. Cannabis sativa, indica, ruderalis, marijuana, weed, herb) and the many uses to which it can be put have unduly harmed the people and culture of our community, we ask the City Council of Asheville to create a community based committee charged with the responsibility of studying the application and effects of marijuana laws in Asheville. We ask that this committee include those concerned individuals who both oppose and favor the criminal status of this plant in order to insure that meaningful discourse takes place and that appropriate recommendations can be made to City Council by this committee. We ask that every effort be made to encourage participation in this committee by any concerned citizen. We ask that City Council make those resources at their disposal available to this community committee and that City Council help to educate their constituency concerning the findings of this committee. We ask that this committee meet in a location that is inviting to all of our citizens, including those who favor decriminalization and legalization. It is our resolve that the laws prohibiting the cultivation and use of Cannabis and their local application have serious ramifications for our community. In order to determine whether or not these laws are being applied fairly in our community regardless of race, gender, age or social status, and whether or not this marijuana prohibition is detrimental or beneficial to our people, the local application and efforts of these laws must be studied. With this we urgently petition you, our representatives, to aide us in the cause of brining further understanding and compassion to Asheville and its citizens."

He said that in 1998 they presented a resolution proposal and they did not seek agreement, but to hear the voice of each Council member on their resolution proposal. Mayor Sitnick, upon advice of the City Attorney, said that this issue was not an issue City Council could address – it was not within their powers or responsibilities. When the resolution was introduced recently on the moratorium for the death penalty, Vice-Mayor Cloninger made the same statement concerning that resolution proposal. And yet, City Council chose to vote on that. He felt there is inequity and unfairness.

149

Mayor Sitnick said that when we considered and passed the moratorium on the death penalty, we did so in response to a legislative study committee that was already on-going in the state legislature. Our resolution was in support of their work and in support of a moratorium. It was not in support of changing a law that we did not create. She supported Mr. Waterman's right to do this and to want to pursue this, but it needs to be pursued at the level that these laws are made at. Since City Council doesn't have the authority to pass a law, then what is the point. The moratorium on the death penalty was not passing or changing a law.

Councilwoman Bellamy said that Mr. Waterman does not need City Council's approval to create a community based committee. They have all the right and power to do this now.

Mr. Waterman said for their committee to study the application of the laws, whether or not their being applied fairly, whether or not people are prosecuted fairly, or whether or not there is discrimination according to gender, age or race, they need resources placed at their disposal. Unless there is a committee, sanctioned by this Council, the Police Department and the City Manager will not provide them with resources. Committees like this have been created by other city councils and this is totally within the purview of your powers.

Vice-Mayor Cloninger moved that we not adopt the resolution read by Mr. Waterman or any similar resolution. This motion was seconded by Councilman Worley.

Councilman Worley said that this Council did pass a resolution involving the death penalty moratorium and that not to deal with this might be inconsistent. From his personal standpoint, he did not feel (and he expressed his views at the time Council adopted the resolution on the death penalty moratorium) that that was a subject that this City Council should not be involved in. He feels just as strongly in this situation. This is not the proper forum for this kind of discussion. These kinds of discussions need to be taking place at the state level with our state legislators who do have the power to deal with this subject.

Councilman Hay said that he voted in favor of the resolution supporting a moratorium on the death penalty because he felt they were being asked to join a state-wide effort and to follow the lead of other cities to pass a resolution in the name of our City to present to our legislature. He did feel that was a municipal government role and for that reason was able to support voting for the moratorium on the death penalty. This is not a similar situation. This is a state law and an element that he would think City Council would have an impact on.

Councilman Peterson said there what is being asked is an endorsement of a committee to have a public discussion and you don't really need our endorsement. This is an issue, to distinguish it from the moratorium on the death penalty, that at this point doesn't have that public level of support. Partly maybe because of lack of education. He doesn't think in Asheville there is quite the level of support or interest that we would respond to this issue. He said that if Mr. Waterman things there is that level of support, he suggested he create the committee, study it, lobby votes and convince City Council that this is something that a significant number of citizens of Asheville feel strongly enough for us to get involved. He would not be in favor of taking a position on this.

Councilwoman Field would not support this resolution for the same reason she did not support the resolution in support of a moratorium on the death penalty. Personally she would support some kind of changes to the laws that would allow the medical use of marijuana. But she still didn't think it is City Council's place to do anything about it.

The motion made by Vice-Mayor Cloninger to deny the resolution and seconded by Councilman Worley carried unanimously.

At 10:59 p.m., Councilman Hay moved to excuse Vice-Mayor Cloninger from the meeting due to a very early out of town trip. This motion was seconded by Councilman Worley and carried unanimously.

C. COMMENTS BY DAVID GORY

Mr. David Gory, east Asheville resident, said that Council feels this is not a municipal issue, however, City Council provides direction to the Police Department as to their priorities. You could, if a study was done and it was shown that the current application of our laws are damaging to our citizens, which he believed it would show, instruct the Police Department to place victimless crimes at the lowest possible priority.

D. COMMENTS BY KEVIN ROLLINS

Mr. Kevin Rollins, representing the Buncombe County Libertarian Party, wondered if there was a City Council policy on voting on legislative issues.

He felt that City Council is secretly working to sign a deal with the National Basketball Association to either upgrade the Civic Center or build a new arena. He felt that entertainment is not part of City government.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 11:06 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

151

Tuesday – January 30, 2001
Municipal Building
100 Court Plaza

7:00 p.m. - Community Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

The following topics were raised by residents and addressed by City Council and City staff: urge for City Council to work with Buncombe County to find a different location for their satellite jail to be located on South Lexington; graffiti on mailboxes on Cherry Street and Church Street; pieces of property in Asheville are not being allowed to be developed, i.e. Gerber Road and Swannanoa River Road properties; support of Green Building Program in Asheville; water leak on Houston Street near Hill Street; allegation that there is too much chlorine in water due to poor infrastructure; development should occur in City only if the infrastructure can support it; concern that City Council traveled to Tryon, N.C., for their annual retreat instead of keeping Asheville's tax dollars in Buncombe County; need for more sidewalks to be wheelchair accessible; litter problem in downtown area; concern that minimum wage residents are having a problem finding affordable housing; what is City doing to try to alleviate air pollution with regard to their fleet management; bicycle safety; need to expand hours of operation of buses; will the type of issues City Council considers change when the City Council make-up changes; what is the procedure for approaching government to express concerns and place issues on City Council agendas; importance of clean air; sidewalks are in a state of disrepair; request for City Council to institute an education program on personal products regarding indoor air pollution; encouraged City to establish a wind solar or hydro-energy power source; encouraged City to adopt a living wage ordinance; question as to how City residents can be more involved in City Council's goal-setting process; and observation that City Council's goals do not impact the common person.

At 8:32 p.m., Councilman Worley moved to go into closed session (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations – G.S. 143-318.11 (a) (4); (2) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease – G.S. 143-318.11 (a) (5); and (3) to consult with an attorney employed or retained by the City in order to discuss matters with respect to which the attorney-client privilege must be preserved, including a lawsuit involving the following parties: City of Asheville, Carolina Power & Light Company, The Eaton Corporation, Cutler-Hammer Corporation, Myrna Briggs, Ridgefield Properties, LLC, et al. – G. S. 143-318.11 (a) (3). This motion was seconded by Councilwoman Field and carried unanimously.

At 11:30 p.m., Councilman Hay moved to come out of closed session. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Sitnick adjourned the meeting at 11:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – February 6, 2001 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Bid Award for Critical Needs Water System Improvements – Phase I

Summary: This is a review of the Regional Water Authority's bid awards for Contracts 1,2 & 3 of the Critical Needs Phase II Water Distribution System Improvements.

Sealed bids were received and opened on Tuesday, January 9, 2001 for the Authority's Critical Needs Phase II Contracts 1,2 & 3. Seven (7) bids were received for Contract 1 with Ray Smith Construction Company submitting the low bid of $611,602.00. Contract 1 includes the installation of approximately 14,500 lf of 6-inch and 4-inch ductile iron waterlines and a booster pumping station for the Allen Mountain service area. A complete list of bidders follows:

Critical Needs Contract 1
Engineer's Estimate: $700,000

COMPANY	BID
Ray Smith Construction Company, Newland, N.C.	$ 611,602.00
Cooper Construction Company, Hendersonville, N.C.	$ 727,808.75
T&K Utilities, Fairview, N.C.	$ 782,880.50
Steppe Construction Company, Mill Spring, N.C.	$ 783,193.00
Terry Brothers Construction Company, Leicester, N.C.	$ 812,263.00
Wheeler Construction Company, Weaverville, N.C.	$ 826,911.25
Buckeye Construction Company, Canton, N.C.	$ 853,767.85

Five (5) bids were received for Contract 2 with Buckeye Construction Company submitting the low bid of $ 976,605.52. Contract 2 includes the installation of approximately 5,254 lf of 8-inch and 18,960 lf of 6-inch ductile iron waterlines. A complete list of bidders follows:

Critical Needs Contract 2
Engineer's Estimate: $998,221.75

COMPANY	BID
Buckeye Construction Company, Canton, N.C.	$ 976,605.52
Wheeler Construction Company, Weaverville, N.C.	$ 991,269.00
T&K Utilities, Fairview, N.C.	$ 997,919.50
Terry Brothers Construction Company, Leicester, N.C.	$ 1,056,218.50
Cooper Construction Company, Hendersonville, N.C.	$ 1,092,439.50

Seven (7) bids were received for Contract 3 with Wheeler Construction Company submitting the low bid of $ 784,488.10. Contract 3 includes the installation of approximately 4,840 lf of 16-inch and 4,500 lf of 6-inch and 4-inch waterlines. A complete list of bidders follows:

Critical Needs Contract 3
Engineer's Estimate: $794,428.75

COMPANY	BID
Wheeler Construction Company, Weaverville, N.C.	$ 784,488.10
T&K Utilities, Fairview, N.C.	$ 947,369.00
Hobson Construction Company, Arden, N.C.	$ 953,500.50
Cooper Construction Company, Hendersonville, N.C.	$ 959,764.65
Buckeye Construction Company, Canton, N.C.	$ 991,707.89
Terry Brothers Construction Company, Leicester, N.C.	$ 1,007,203.50

These three (3) projects comprise the Authority's Critical Needs Phase II program and are funded by the $2 million high unit cost grant and $ 1 million matching local money that will be part of the Authority's anticipated $13.4 million February 2001 revenue bond issuance. These projects are focused at locations where our existing infrastructure is old, leaking and inadequate to maintain high levels of customer service.

These bids have been reviewed by the Office of Minority Affairs and has approved the award of each contract to the low bidder. McGill Associates, the project engineers for Contract 1, have recommended award of this contract to the low bidder, Ray Smith Construction Company. Cavanaugh Associates, the project engineers for Contract 2 & 3, have recommended award of these contracts to the low bidders, Buckeye Construction Company and Wheeler Construction Company respectively.

Three (3) issues were noted during the review of these bids. They are:

1 On Contract No. 1, Ray Smith Construction Company was represented by a proposed subcontractor at the mandatory pre-bid conference.

2. Also on Contract No. 1, a certified minority's MB-3 form was made out to Ray Smith's proposed subcontractor, Lunsford Construction Company, instead of Ray Smith Construction Company.

3. On Contract No. 2, Buckeye Construction Company failed to acknowledge receipt of Contract Addenda No. 2 on their bid form. Buckeye has since written a letter to staff acknowledging that they did receive Addenda No. 2 prior to the bid opening and that their bid reflects the provisions of this addenda.

The attorney for the Authority has reviewed each of these issues and has told staff that they can be waived as informalities by the Authority and not affect the consideration of these bids.

Each contract has a liquidated damage clause of $ 250.00 per day for failure to complete the project in the time allocated.

The Regional Water Authority awarded contracts to the low bidder shown above at their January 16, 2001, meeting.

This report is provided to City Council for information only.

New Street Name of "Casteel Lane"

Summary: The consideration of a resolution accepting the new proposed street name "Casteel Lane."

Clayton Casteel, owner of lots in Pine Lane Mobile Home Park, has petitioned the City of Asheville to accept the street name "Casteel Lane."
The new street will be located off Mills Gap Road.

City staff recommends adoption of the resolution.

Demolition of Three Buildings on Riverside Drive

Summary: The consideration of a resolution awarding the Hazard Mitigation Grant Program Demolition Project to Garland Brothers Inc. and authorizing the City Manager to enter into a contract with them to demolish three buildings on Riverside Drive.

The City of Asheville Parks and Recreation Department has obtained a grant through the federally funded Hazard Mitigation Grant Program to demolish buildings in flood-prone areas. City staff through the Hazard Mitigation Grant Program has acquired three buildings targeted for demolition. Staff solicited sealed bids from ten contractors, five of which were minority contractors, to demolish three buildings on Riverside Drive. Staff received three sealed bidders and they are as follows:

Empire Dismantlement, Inc.	$134,820.00
Garland Brothers, Inc.	$134,850.00
Superior Grading, Inc.	$140,000.00

Staff has reviewed all bids and determined that Garland Brothers, Inc., is the lowest qualified bidder. Empire Dismantlement, Inc., was disqualified for not having the required insurance. Superior Grading, Inc., was disqualified for not providing the required minority business participation forms. Staff recommends acceptance of the total bid amount of $134,850.00 from Garland Brothers, Inc.

Approved funding is available from the Federal Government under the Hazard Mitigation Grant Program.

The Parks and Recreation Department staff requests City Council authorize the City Manager to enter into a contract with Garland Brothers, Inc., in the amount of $134,850.

Outside Agency Policy

Summary: The consideration of a motion approving City Council's outside agency policy.

During a budget worksession on the proposed Fiscal Year 2000-2001 Annual Budget, City Council asked staff to develop an official policy to guide the Outside Agency Committee's process for evaluating outside agency funding requests.

Staff has developed a draft policy, which has been reviewed by the Outside Agency Committee, and is presented for full Council review. Key aspects of the recommended policy include the establishment of priority service areas for which Council may direct its outside agency funds, the setting of limits on the number of consecutive years certain agencies can receive City funds, and a focus on funding specific programs rather than general operating expenses.

Discussion surrounded "start-up" programs vs. "on-going" programs; limiting "start-up" categories to a maximum of three consecutive years; the need to evaluate how the money has been spent if agency received past funding; will faith-based organizations be allowed to apply for outside agency funding; need to advertise that outside agency funding applications are available; and, when would the policy take effect.

It was the consensus of Council to amend the proposed policy (1) by making minor wording amendments throughout the policy; (2) include that the that the organizations should be 501 (c) (3) agencies; and (3) that the Outside Agency Committee make their recommendation to the full Council sometime in May during a worksession.

Discussion surrounded Councilman Hay's suggestion that in next year's budget that Council look at the entire outside agency funding process in that if an agency is in furtherance of a city government activity (like the A-B Community Relations Council), that it be worked into an appropriate departmental budget.

It was the consensus of City Council for staff to incorporate the changes recommended by City Council and bring the policy back again for further Council review at their February 20, 2001, worksession.

Councilwoman Bellamy did not want this policy to apply to the currently fiscal year.

Construction of Dog Park

Summary: The consideration of a budget amendment, in the amount of $15,000, to establish a grant project budget for construction of a dog park.

The City of Asheville Parks and Recreation Department has received private donations, in the amount $9695, to construct a dog park at the French Broad River Park. The City anticipates receiving another $5,305 in private donations for a total of $15,000. Staff is recommending that Council approve a $15,000 increase in appropriations to the City's grant fund to cover expenses related to construction of the dog park, and that the City fund this increase with revenues from private donations.

City staff recommends City Council approve the budget amendment, in the amount of $15,000, to construct a dog park.

Authority for Mayor to Appoint Informal Committee – Mayor's Committee on (Dis)Abilities

Summary: A group of individuals have approached the Mayor asking her to re-establish the Mayor's Committee on (Dis)Abilities. The role of this Committee will be to (1) be an advocacy committee for inclusion of people with disabilities into the programs, services and facilities provided by the City of Asheville; (2) develop innovative programs, activities and outlets through community involvement of persons with disabilities; (3) develop collaborative efforts between City of Asheville departments and local agencies for access to programs, services and facilities; and (4) develop a community awareness effort/program making people aware of the abilities of persons with disabilities.

Members of the Committee include: Bart Floyd, Chair; Kim Leatherwood, Myra Hill, Bob Brummond, Joe Difalco, Joanna Chantemerle, Deanna Stone, Sheila Roberson, Bernadette Thompson, Kathy Hembree and Bill Cook. Lyle Willis, the City's ADA Coordinator, will serve as staff liaison to this Committee. These appointments are on a voluntary basis only.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

LANDMARK SIGN – DREAMLAND FLEA MARKET SIGN

Historic Resources Director Maggie O'Connor said that this is the consideration of a resolution designating the Dreamland Flea Market Sign at 9 South Tunnel Road historically significant and/or a landmark sign..

The owner of the Dreamland Flea Market Sign located at 9 South Tunnel Road requests landmark sign designation of the 125 square feet, 24 feet high marquee style Dreamland Flea Market Sign. The structural components of the sign were erected in the late 1950s and altered in the 1990s; the sign panels are from the 1990s. Sec. 7-13-2(c) of the Unified Development Ordinance (UDO) "Signs Exempt from Regulation," provides in paragraph 12 that landmark or historically significant signs are exempt from regulation, and that signs may be designated historically significant and/or landmark signs by the city council provided the signs satisfy one or more of the following criteria:

1. The sign is significant to the history of the City of Asheville, including but not limited to, the character of the city as a tourist attraction or cultural center.
2. The sign is unique, notably aesthetic or creative so as to make a significant contribution as a work of art.
3. The sign merits recognition as an important example of technology, craftsmanship, materials or design of the period in which it was constructed and may no longer be economically feasible to produce or manufacture the sign today.

Pursuant to UDO Sec. 7-3-4(a)(2), the Historic Resources Commission may recommend to the City Council that certain objects be designated as historic or landmark. Though not specifically mentioned, this function includes signs. At its November 8, 2000, meeting, the Historic Resources Commission of Asheville and Buncombe County (HRC) reviewed a request for landmark sign designation for the Dreamland Flea Market sign. By a vote of 4-7 the motion to recommend that designation failed. The applicant has elected to proceed with his request without a favorable recommendation from HRC.

Staff recommends denial of the request to designate the Dreamland Flea Market sign at 9 South Tunnel Road as an historically significant and/or a landmark sign consistent with the HRC action. If Council wishes to designate the Dreamland Flea Market Sign as a landmark or historic sign, adoption of a resolution is required. If Council wishes to deny the request, a motion to that effect may be made, but is not required, or Council may vote down the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next City Council agenda.

BOARDS & COMMISSIONS

Councilwoman Field, Chair of the Asheville Regional Housing Consortium, answered various questions from Councilwoman Bellamy regarding the Consortium's make-up. Mayor Sitnick said that she appointed Mr. John Myers from Clyde Savings Bank as the City's second representative on the Consortium. Councilwoman Bellamy felt that Karen Kiehna, Executive Director of the Affordable Housing Coalition, would have made an excellent addition to the Consortium.

It was the consensus of City Council to confirm the appointment of Brian Moore as the representative of Mission St. Joseph Health System on the Sustainable Economic Development Strategic Plan Implementation Task Force to fill the unexpired term of David Spillers until June 30, 2003.

It was the consensus of City Council to confirm the appointments of (1) Clara Jeter, as the representative from the A-B Community Relations Council on the Minority Business Commission, to serve the unexpired term of Bonnie Habel until August 1, 2002; and (2) Valerie Dennis, as one of the three certified minority business owners on the Minority Business Commission, to fill the unexpired term of Katherine DeBrow until August 1, 2001.

It was the consensus of City Council to readvertise the vacancies on the Noise Ordinance Appeals Board (only one application was received for three vacancies).

Discussion surrounded the process to be followed with regard to appointments to the School Board. It was the consensus of City Council to not consider the three applicants that do not live in the School District. With regard to the ten remaining candidates (two of which are incumbents), City Council instructed City Clerk Burleson to compile the questions which City Council submitted to her and work with Councilwoman Bellamy to narrow the questions to approximately ten questions. Once the ten questions are approved by Council (either at their February 20, 2001, worksession or sooner), City Clerk Burleson will send the questions to all ten applicants and give them as much time as possible to complete their responses and return them to her. City Council will then review all responses and then determine who they wish to interview.

It was the consensus of City Council to readvertise the vacancies for the Taxicab Advisory Board (only one application was received for five vacancies).

It was the consensus of City Council to have the City Clerk prepare the proper paperwork to appoint Herman Turk to the Tourism Development Authority, to fill the position of an owner or operator of a hotel, motel or other taxable tourist accommodation with more than 100 renal units. For the vacancy of an owner or operator of a hotel, motel or other taxable tourist accommodation with 100 or fewer rental units, City Council instructed City Clerk Burleson to arrange interviews for Catherine Sklar and Victor Trantham.

It was the consensus of City Council to instruct the City Clerk to prepare the proper paperwork to reappoint Monty Wooten to the Tree Commission.

It was determined that Vice-Mayor Cloninger would remain liaison to the WNC Regional Air Quality Agency. Mayor Sitnick urged all Council to review the minutes of their respective boards to which they are liaisons to and make periodic reports to Council. Mayor Sitnick asked City Attorney Oast for an update on the Clean Air Community Trust at the February 20, 2001, worksession.

OTHER MATTERS

Mayor Sitnick was pleased to announce that the Asheville Airport will now have a direct flight to Newark, New York.

Upon request of Councilman Peterson, it was the consensus of City Council to instruct City staff to bring back at the February 20, 2001, worksession a report containing all funding options regarding the Civic Center renovations or replacement. If appropriate, formal action could be taken on February 27, 2001, with a request being sent to our legislative delegation seeking approval of possibly a prepared meal tax or a hotel room tax. Mayor Sitnick felt it would be a good idea to send a Council delegation to Raleigh to lobby our delegates.

Upon request of Mayor Sitnick, it was the consensus of City Council to instruct the City staff to begin a concerted effort to put real resources (staff and money) into cleaning up the City. She requested, and received, Council's support to strengthen enforcement of elimination of pole signs, signs in the right-of-way and litter in general. She suggested City staff contact BellSouth and Carolina Power & Light Company who may want to join the City in these efforts.

Upon inquiry of Councilwoman Field, City Attorney Oast said that City Council will be receiving a report soon with regard to the conditional use process.

Councilman Peterson asked that the illegal parking on Haywood Road at I-240 continue to be enforced.

Upon request of Mayor Sitnick, it was the consensus of City Council to instruct City Clerk Burleson to schedule worksession dates to meet with City appointees to the Regional Water Authority and to the Metropolitan Sewerage District Board.

Mayor Sitnick formally requested that City Council review the water and sewer agreements from a historical prospective as well as a fiscal prospective. She would like an update on how those agreements affect the Asheville taxpayers now and how they will affect them in the future.

City Manager Westbrook updated City Council on his meetings with the County regarding the County's proposed satellite jail facility on South Lexington Avenue. It was the consensus of City Council to instruct City Manager Westbrook to proceed with obtaining appraisals on City-owned properties that may be considered for trade or sale. In addition, he and County Manager Greene discussed and agreed that there needs to be long-range planning for the area surrounding the City-County Plaza. Councilwoman Bellamy said that concerns have been expressed to her by Mt. Zion Baptist Church, along with residents on South Charlotte Street, about the proposed satellite jail being located in the City Hall/Courthouse area.

CLOSED SESSION

At 5:25 p.m., Councilman Bellamy moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations – G.S. 143-318.11 (a) (4); and (2) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease – G.S. 143-318.11 (a) (5). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 6:35 p.m., Councilwoman Bellamy moved to come out of closed session. This motion was seconded by Mayor Sitnick and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:35 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – February 13, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Hay gave the invocation.

ADDITIONS TO THE AGENDA

City Manager Westbrook requested an item be added under "Other Business" dealing with the suspension of local government reimbursement payments.

Councilwoman Bellamy requested Mr. Gene Bell be added under "Other Business" to discuss the elimination of the achievement gap in relation to the upcoming appointing to the Asheville School Board.

Mayor Sitnick stated that she would like to make some comments about litter in general under "Other Business."

I. PROCLAMATIONS:

A. RESOLUTION NO. 01-13 RESOLUTION OF APPRECIATION TO RETIRING EMPLOYEE ORALENE SIMMONS

Mayor Sitnick read the resolution of appreciation to retiring employee Oralene Simmons, who has retired from her position as Program Supervisor of Cultural Arts in the Parks and Recreation Department, on February 1, 2001. Ms. Simmons served the citizens of Asheville for 26 years. City Council and City staff thanked Ms. Simmons for her service.

Resolution No. 01-13 as adopted by acclamation.

RESOLUTION BOOK NO. 26 – PAGE 270

B. PROCLAMATION PROCLAIMING THE MONTH OF FEBRUARY 2001 AS "BLACK HISTORY MONTH"

Councilwoman Bellamy read the proclamation proclaiming February 2001, as "Black History Month" in the City of Asheville. She presented the proclamation to Ms. Oralene Simmons who briefed City Council on some activities taking place during the month.

II. CONSENT:

Mayor Sitnick requested Item G "Appointment of Members on Mayor's Committee on (Dis)Abiilities" be pulled from the Consent Agenda to be discussed individually.

A. APPROVAL OF THE MINUTES OF THE CITY COUNCIL RETREAT HELD ON JANUARY 19-20, 2001, THE REGULAR MEETING HELD ON JANUARY 23, 2001, THE COMMUNITY MEETING HELD ON JANUARY 30, 2001, AND THE WORKSESSION HELD ON FEBRUARY 6, 2001

B. RESOLUTION NO. 01-14 - RESOLUTION ACCEPTING THE NEW STREET NAME OF "CASTEEL LANE" LOCATED OFF MILLS GAP ROAD

Summary: The consideration of a resolution accepting the new proposed street name "Casteel Lane."

Clayton Casteel, owner of lots in Pine Lane Mobile Home Park, has petitioned the City of Asheville to accept the street name "Casteel Lane."
The new street will be located off Mills Gap Road.

City staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 271

C. RESOLUTION NO. 01-15 - RESOLUTION APPOINTING A MEMBER TO THE SUSTAINABLE ECONOMIC DEVELOPMENT STRATEGIC PLAN IMPLEMENTATION TASK FORCE

Summary: The consideration of a resolution appointing Brian Moore (Mission/St. Joseph's Health System) on the Sustainable Economic Development Strategic Plan Implementation Task Force, to serve the unexpired term of David Spillers, term to expire June 30, 2003.

RESOLUTION BOOK NO. 26 – PAGE 272

D. RESOLUTION NO. 01-16 - RESOLUTION CONFIRMING MEMBERS TO THE MINORITY BUSINESS COMMISSION

Summary: The consideration of a resolution confirming the appointment of (1) Clara Jeter, representative of the Asheville-Buncombe Community Relations Council, on the Minority Business Commission, to serve the unexpired term of Bonnie Habel, term to expire August 1, 2002; and (2) Valerie Dennis, one of three certified minority owned businesses, on the Minority Business Commission to serve the unexpired term of Katherine DeBrow, term to expire August 1, 2001.

RESOLUTION BOOK NO. 26 – PAGE 273

E. RESOLUTION NO. 01-17 - RESOLUTION AWARDING THE HAZARD MITIGATION GRANT PROGRAM DEMOLITION PROJECT TO GARLAND BROTHERS INC. TO DEMOLISH THREE BUILDINGS ON RIVERSIDE DRIVE

Summary: The consideration of a resolution awarding the Hazard Mitigation Grant Program Demolition Project to Garland Brothers Inc. and authorizing the City Manager to enter into a contract with them to demolish three buildings on Riverside Drive.

The City of Asheville Parks and Recreation Department has obtained a grant through the federally funded Hazard Mitigation Grant Program to demolish buildings in flood-prone areas. City staff through the Hazard Mitigation Grant Program has acquired three buildings targeted for demolition. Staff solicited sealed bids from ten contractors, five of which were minority

161

contractors, to demolish three buildings on Riverside Drive. Staff received three sealed bidders and they are as follows:

Empire Dismantlement, Inc.	$134,820.00
Garland Brothers, Inc.	$134,850.00
Superior Grading, Inc.	$140,000.00

Staff has reviewed all bids and determined that Garland Brothers, Inc., is the lowest qualified bidder. Empire Dismantlement, Inc., was disqualified for not having the required insurance. Superior Grading, Inc., was disqualified for not providing the required minority business participation forms. Staff recommends acceptance of the total bid amount of $134,850.00 from Garland Brothers, Inc.

Approved funding is available from the Federal Government under the Hazard Mitigation Grant Program.

The Parks and Recreation Department staff requests City Council authorize the City Manager to enter into a contract with Garland Brothers, Inc., in the amount of $134,850.

RESOLUTION BOOK NO. 26 – PAGE 274

F. ORDINANCE NO. 2791 - BUDGET AMENDMENT FOR CONSTRUCTION OF DOG PARK

Summary: The consideration of a budget amendment, in the amount of $15,000, to establish a grant project budget for construction of a dog park.

The City of Asheville Parks and Recreation Department has received private donations, in the amount $9695, to construct a dog park at the French Broad River Park. The City anticipates receiving another $5,305 in private donations for a total of $15,000. Staff is recommending that Council approve a $15,000 increase in appropriations to the City's grant fund to cover expenses related to construction of the dog park, and that the City fund this increase with revenues from private donations.

City staff recommends City Council approve the budget amendment, in the amount of $15,000, to construct a dog park.

ORDINANCE BOOK NO. 19 – PAGE 86

G. MOTION APPOINTING MEMBERS TO THE MAYOR'S COMMITTEE ON (DIS)ABILITIES

This item was pulled from the Consent Agenda for further discussion.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEM PULLED FROM THE CONSENT AGENDA FOR FURTHER DISCUSSION

MOTION APPOINTING MEMBERS TO THE MAYOR'S COMMITTEE ON (DIS)ABILITIES

Mayor Sitnick said that a group of individuals have approached her to re-establish the Mayor's Committee on (Dis)Abilities. The role of this Committee will be to (1) be an advocacy committee for inclusion of people with disabilities into the programs, services and facilities provided by the City of Asheville; (2) develop innovative programs, activities and outlets through community involvement of persons with disabilities; (3) develop collaborative efforts between City of Asheville departments and local agencies for access to programs, services and facilities; and (4) develop a community awareness effort/program making people aware of the abilities of persons with disabilities.

Members of the Committee include: Bart Floyd, Chair; Kim Leatherwood, Myra Hill, Bob Brummond, Joe Difalco, Joanna Chantemerle, Deanna Stone, Sheila Roberson, Bernadette Thompson, Kathy Hembree and Bill Cook. Lyle Willis, the City's ADA Coordinator, will serve as staff liaison to this Committee. These appointments are on a voluntary basis only.

Councilman Worley moved to authorize the Mayor to make appointments to the Mayor's Committee on (Dis)Abilities. This motion was seconded by Councilwoman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING RELATIVE TO AMENDING THE UNIFIED DEVELOPMENT ORDINANCE IDENTIFYING JAILS AND RELATED CORRECTIONAL FACILITIES AS CONDITIONAL USES IN THE CENTRAL BUSINESS DISTRICT, REGIONAL BUSINESS DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT AND ESTABLISHING STANDARDS FOR THESE USES

ORDINANCE NO. 2792 - ORDINANCE AMENDING THE UNIFIED DEVELOPMENT ORDINANCE IDENTIFYING JAILS AND RELATED CORRECTIONAL FACILITIES AS CONDITIONAL USES IN THE CENTRAL BUSINESS DISTRICT, REGIONAL BUSINESS DISTRICT AND COMMERCIAL INDUSTRIAL DISTRICT AND ESTABLISHING STANDARDS FOR THESE USES

Upon inquiry of Councilman Hay, City Attorney Oast felt there was no conflict of interest for Councilman Hay, even if he is an adjacent land owner to the proposed County's satellite jail location.

Mayor Sitnick opened the public hearing at 5:30 p.m.

Chief Planner Gerald Green said that this is the consideration of an amendment to the Unified Development Ordinance (UDO) to identify detention centers, jails, and related correctional facilities as conditional uses in the Central Business, Regional Business, and Commercial Industrial Districts and to establish standards for these uses. This public hearing was advertised on February 2 and 9, 2001.

The proposed ordinance amendment would identify detention facilities, jails, and related correctional facilities as conditional uses in the central Business, Regional Business, and Commercial Industrial Districts. Conditional uses are defined in the UDO as uses that are generally compatible with other land uses permitted in a zoning district but which, because of their unique circumstances or potential impacts on the surrounding neighborhoods and/or the City as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Detention centers, jails, and related correctional facilities can have significant impacts on surrounding properties. Review of these facilities as conditional uses provides a process that permits the consideration of these impacts and the identification of ways to mitigate the impacts. Opportunities for public hearings are provided through the conditional use permitting process, allowing for public comment and input on the development of these facilities.

In reviewing the zoning districts and uses currently permitted in the zoning districts, it is felt that the Central Business, Regional Business, and Commercial Industrial districts are the appropriate districts for the location of these facilities, provided that they are reviewed as conditional uses. As conditional uses, certain standards can be identified in the ordinance to mitigate impacts and assure that they are compatible with surrounding uses. In addition, the City Council may attach conditions to address impacts unique to a particular site or development proposal. The ordinance amendment identifies standards designed to address issues common to detention centers, jails, and related correctional facilities.

He reviewed the standards listed in the ordinance amendment as follows:

- Design standards – The structure must comply with the Downtown Design Review Guidelines for new construction in the areas covered by the Design Review Guidelines. Compliance with the design guidelines for structures located in this area shall be mandatory. The City Council approving the Conditional Use Permit shall assume authority for determining compliance with the Downtown Design Review standards for these uses. In other locations, the structure must comply with the design standards set forth in the supplemental developmental standards for large retail structures. For the purpose of this condition, the structure shall be treated as a general retail structure.
- Fencing – No chain link, barbed wire, razor wire, or similar fence materials shall be used in areas that are visible from adjacent properties or from the public way unless specifically permitted by the City Council approving the Conditional Use Permit.
- Fenced areas – Fenced areas shall not abut any principal street unless specifically permitted by the City Council approving the Conditional Use Permit.
- Lighting – Lights in pedestrian areas and parking lots shall not exceed 16 feet in height. All lights other than those in public pedestrian areas, including security lights, shall be full cut-off type fixtures, and shall not produce direct glare or light trespass on adjacent properties.
- Signage – All signage must be reviewed and approved as part of the conditional use permit application. City Council may attach conditions addressing the location, size, number, and illumination of signs based upon circumstances related to the location and impact of the sign(s).
- Operational standards – No outdoor speaker systems shall be permitted. Vehicle entering and/or leaving the facility shall not use sirens or emergency lights unless responding to an emergency.
- Loading/Unloading – All loading and unloading areas shall be located internally on the site and screened from view from adjacent properties and public ways. All loading and unloading activities shall take place between the hours of 6:00 AM and 9:00 PM, unless specifically waived by the City Council approving the Conditional Use Permit or in conflict with a judicial order. This condition includes prisoner pick up and drop off of more than two (2) prisoners.
- Exercise Yard - Exercise yards and other outdoor activity areas shall be located internally on the site and screened from view from adjacent properties and public ways.
- Vehicle Storage – All vehicles associated with the use shall be stored in an enclosed or screened area. The vehicle storage area may be screened with vegetation, fences, a combination of fences and landscape material, or other means designed to effectively screen the stored vehicles from adjacent properties and the public way.

Identifying detention centers, jails, and related correctional facilities as conditional uses will ensure that these facilities are appropriately located and designed so as to have minimal impact on neighboring uses. This process will also provide for a public forum to review and discuss development plans.

The Planning and Development staff recommends approval of the wording amendment. At the Planning and Zoning Commission meeting on February 7, 2001, the Commissioners unanimously recommended approval of the ordinance amendment.

Mr. Green provided City Council with a revised ordinance amendment with minor changes suggested by Buncombe County Planning staff.

Mr. Green responded to questions from Councilman Peterson regarding the Downtown Design Review Guidelines, fencing, and vehicle storage.

Ms. Vickers, property owner on Ravenscroft Drive, spoke of support of this proposed UDO amendment.

Mayor Sitnick closed the public hearing at 5:50 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Vice-Mayor Cloninger moved for the adoption of Ordinance No. 2792 as revised by Mr. Green. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 18 – PAGE 88

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION DESIGNATING THE SIGN KNOWN AS "DREAMLAND FLEA MARKET SIGN" LOCATED AT 9 SOUTH TUNNEL ROAD AS A LANDMARK SIGN

Historic Resources Director Maggie O'Connor said that this is the consideration of a resolution designating the Dreamland Flea Market Sign at 9 South Tunnel Road historically significant and/or a landmark sign..

The owner of the Dreamland Flea Market Sign located at 9 South Tunnel Road requests landmark sign designation of the 125 square feet, 24 feet high marquee style Dreamland Flea Market Sign. The structural components of the sign were erected in the late 1950s and altered in the 1990s; the sign panels are from the 1990s. Sec. 7-13-2(c) of the Unified Development Ordinance (UDO) "Signs Exempt from Regulation," provides in paragraph 12 that landmark or historically significant signs are exempt from regulation, and that signs may be designated historically significant and/or landmark signs by the city council provided the signs satisfy one or more of the following criteria:

1. The sign is significant to the history of the City of Asheville, including but not limited to, the character of the city as a tourist attraction or cultural center.
2. The sign is unique, notably aesthetic or creative so as to make a significant contribution as a work of art.

3. The sign merits recognition as an important example of technology, craftsmanship, materials or design of the period in which it was constructed and may no longer be economically feasible to produce or manufacture the sign today.

Pursuant to UDO Sec. 7-3-4(a)(2), the Historic Resources Commission may recommend to the City Council that certain objects be designated as historic or landmark. Though not specifically mentioned, this function includes signs. At its November 8, 2000, meeting, the Historic Resources Commission of Asheville and Buncombe County (HRC) reviewed a request for landmark sign designation for the Dreamland Flea Market sign. By a vote of 4-7 the motion to recommend that designation failed. The applicant has elected to proceed with his request without a favorable recommendation from HRC.

Staff recommends denial of the request to designate the Dreamland Flea Market sign at 9 South Tunnel Road as an historically significant and/or a landmark sign consistent with the HRC action. If Council wishes to designate the Dreamland Flea Market Sign as a landmark or historic sign, adoption of a resolution is required. If Council wishes to deny the request, a motion to that effect may be made, but is not required, or Council may vote down the resolution.

When Councilman Worley asked if City Council could require new panels that mirror those old panels, Ms. O'Connor said one of the issues discussed at the HRC meeting was if it was possible to remove the existing panels and replicate the old 1970 "Dreamland Drive-In Theatre" sign. City Attorney Oast told the Commissioners that it was possible. He also suggested that if the Commissioners do that, they might want conditions associated with it. The Commissioners did discuss this and one of their conditions was that the sign could not be used for advertising. The owner did agree to those conditions, however, the motion by the Commissions to designate the sign, even with conditions, failed.

Upon inquiry of Councilman Worley, Ms. O'Connor said that the sign is considered an abandoned sign and the only way the owners can keep the sign is if it is designated historically significant or a landmark sign – then it's exempt from the sign regulations.

Councilwoman Field said that she didn't see a reason for the sign to remain since the Dreamland Flea Market and the Dreamland Drive-In are no longer there. She noted that the sign is presently in front of the new Lowe's building.

Mr. Scott Jones, attorney representing the owner, urged City Council to designate the sign as a landmark sign or a historic sign because the Drive-In was an important part of the history of Asheville since 1947 and the sign has been there since 1958. He said the sign is the same as the one in 1958, except the panels had to be changed over the years due to wind damage. He said the request is that the present sign be designated historic or a landmark sign, however, at the first meeting of the HRC, at a Commission's suggestion, Mr. Pless (owner of the sign) agreed to do a replica of the 1970's panel. Mr. Jones said that the only other changes to the sign is the location of the sign since it had to be moved when the N.C. Dept. of Transportation moved the road, a catwalk has been added, and the small "flea market Fri. Sat. Sun." sign removed which was at the bottom of the 1970's sign. He said they would be willing to do a replica of the small sign which was attached to the bottom of the 1970's sign too. He said Mr. Pless is willing to accept conditions that the open marquee space not be used for current advertising, but to have movies listed that were only released in the 50's and 60's.

Mayor Sitnick noted that the present panel which Mr. Pless agrees to change back to the 1970's panel would be just a replica – and not the original sign. Mr. Jones pointed out that the Sluder Furniture Company sign that City Council designated was not the original sign either – it was made in 1987. Mayor Sitnick then responded that Sluder Furniture Company is still in business as is the other landmark/historic signs that City Council has designated in the past.

166

Councilman Worley said that he agrees that the sign is significant to the history of Asheville in that the Dreamland Drive-In and subsequently the Flea Market has been an institution in Asheville for 50 years.

Councilman Peterson said that in talking with people who grew up in this area, the sign does have a lot of sentimental attachments. He also felt the 1970's sign is somewhat unique.

Mr. Peter Dawes felt that City Council should not get rid of things in Asheville that have a history to the City.

Mayor Sitnick said she would love to see the 1970's replica panels be a part of the current Dreamland Convenience Store. City Attorney Oast said that to place those panels on the current building might require an ordinance amendment.

Mr. Pless agreed to make a replica of the 1970's sign and put it on the current sign. He also agreed that they would not use the marquee for any type of advertising, but use it for "little sayings."

Mayor Sitnick was concerned that as Asheville grows and changes, businesses will go out of business that existed many years ago and everyone will want to preserve their signs as historic structures. Then we'll have all of the old signs, in addition to all of the newer signs. The idea is to minimize those visual signs, especially ones that still exist for businesses that are no longer there.

Councilman Worley moved to adopt the resolution designating the "Dreamland Drive-In Theatre" sign as a landmark sign based on the that the sign is significant to the history of the City of Asheville, including but not limited to, the character of the city as a tourist attraction or cultural center. Conditions attached to the sign include: (1) the old panels be replicated so that it has the blue panel with "Dreamland Drive-In Theatre" ; and (2) that the changeable sign portion of it not be used for advertising or for political advertising. This motion was seconded by Councilman Peterson with some suggested amendments to the conditions as follows: (1) the return to the original appearance be on both sides; and (2) the blank panel be limited to movies released during the 1950's and 1960's; and (3) add a designation (to be determined by City staff) that notes that "this is a landmark sign." Councilman Worley agreed to amend his motion to include Councilman Peterson's suggested amendments.

Mr. Pless agreed to the conditions in the motion, but wanted to be able to keep the "little sayings" on the marquee. After understanding that the "little sayings" would no longer be allowed, Mr. Pless agreed to discontinue those if that is the only way City Council would designate the sign as a landmark sign.

Upon inquiry of Mayor Sitnick, Ms. O'Connor listed the other historic and/landmark signs City Council designated. She said that all of the signs designated are attached to the existing businesses. In defense of Sluder Furniture Company, there was a fire and the sign was replaced.

Councilwoman Bellamy said that she did grow up in Asheville and frequented the Dreamland Drive-In. She understands the historic nature of the sign and how it has a lot of memories. However, she felt the sign was confusing for people who are passing by and for tourists in our area. She didn't feel that the sign meets the requirements to be designated as a historic or landmark sign.

Councilman Hay agreed with Councilwoman Bellamy in that there is a sentimental attachment to the Dreamland Drive-In Theatre, but not necessarily the sign. He felt that we need to respect the opinion of the HRC because we do ask them to make these decisions on Council's behalf.

Vice-Mayor Cloninger very much respected Mr. Pless and what he has done for this community. But given that there is no drive-in theatre and no flea market, the sign today simply constitutes a billboard.

The amended motion made by Councilman Worley and seconded by Councilman Peterson failed on a 2-5 vote, with Councilman Peterson and Councilman Worley voting "yes" and Mayor Sitnick, Vice-Mayor Cloninger, Councilwoman Bellamy, Councilwoman Field and Councilman Hay voting "no."

Mayor Sitnick suggested Mr. Pless see if there is a possible way for him to replicate the 1970's Dreamland Drive In Theatre sign and get permission to attach it to the building as a memory.

B. RESOLUTION NO. 01-18 - RESOLUTION APPOINTING A MEMBER TO THE TREE COMMISSION

Vice-Mayor Cloninger said that this is a consideration of a resolution reappointing Monty Wooten as a member of the Tree Commission to serve a three year term, term to expire December 31, 2003, or until his successor has been appointed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved for the adoption of Resolution No. 01-18. This motion was seconded by Mayor Sitnick and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 275

C. APPROVAL OF SCHOOL BOARD CANDIDATE QUESTIONS

After discussion, City Council approved 14 questions to be sent out to the School Board candidates. Written responses will be due to the City Clerk by Noon on February 23, 2001. On February 27, City Council will determine who they wish to interview. Interviews will be on Tuesday, March 6, 2001, beginning at 5:00 p.m. in Room 209 of the City Hall Building. Formal appointments to the School Board will be made on Tuesday, March 13, 2001.

VI. OTHER BUSINESS:

Suspension of Local Government Reimbursement Payments

City Manager Westbrook said that the City has developed a plan to reduce the current Fiscal Year 2000-01 budget by $600,000 to offset an equivalent loss in revenue resulting from the state's decision to withhold local business inventory reimbursement payments to local governments.

In 1988 the Generally Assembly exempted business inventories from the local property tax base. To compensate local governments for the reduction in their taxing authority, the General Assembly agreed to make annual reimbursement payments to local governments equal to the value of the lost tax revenues. The state typically distributes 50% of the business inventory reimbursement payments to local governments on September 30 and 50% on April 30 of each year.

168

As a measure to address the state's projected $791 million budget shortfall, Governor Mike Easley recently suspended the business inventory tax reimbursement payments to local governments that were scheduled for April 30, 2001. Approximately $95 million in total reimbursements will be withheld from local governments. Asheville will lose approximately $600,000, almost one and a half cents on the tax rate. City staff regrets the state's decision to solve its budget problems at the expense of local governments.

It is possible that business inventory reimbursements will be returned to local governments before June 30 if the state's budget projections improve before the close of the fiscal year. Due to the uncertainty of the state's budget situation, however, staff must assume that reimbursable revenues will not be returned during the current fiscal year and must have a plan for reducing the current FY 2000/2001 budget by $600,000 to offset the revenue loss. To address the state's cuts to reimbursable revenues, staff will implement the following budget reduction strategies:

	Strategy	Projected Savings
1.	Modified hiring freeze, with exceptions for public safety, public works, and water resource services.	$186,300
2.	Suspension of purchases for certain capital equipment and capital improvement projects.	$333,700
3.	Limitations on out-of-state and some in-state travel.	$ 80,000
	Total Projected Savings	$600,000

He said that grants which the City has applied for at the state level, including the compressed natural gas grant for City vehicles, is hung up at the State level because of this short-fall. In addition, a grant from the Clean Water Trust Fund and from the Parks and Recreation Trust Fund are being held up. He said there may be more outcomes that he will be trying to determine over the next couple of days.

City Manager Westbrook responded to several questions from Council, some being but are not limited to, what does a modified hiring freeze mean; who is included in the hiring freeze; what is some of the capital equipment that will be suspended; and what capital improvement projects will be suspended.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that the N. C. League of Cities is advocating for cities.

Councilman Worley said that he, Councilwoman Field and Councilman Hay were planning to attend a very important National League of Cities Conference in Washington, D.C., in March. Aware of this budget crunch and after conferring with Councilwoman Field and Councilman Hay, he instructed the City Manager to cancel those reservations.

It was the consensus of City Council to have the City Manager proceed in this plan to reduce the current Fiscal Year 2000-01 budget.

Comments by Mr. Gene Bell on Significant Gap Between Achievement of Majority Students and Students of Color and the Disproportion Number of Suspensions and Expulsions of the Same Group

Mr. Gene Bell expressed concern on the significant gap between achievement of majority students and students of color and the disproportionate number of suspensions and expulsions of the same group. In addition to a very disturbing and staggering number of drop-outs among children of color in our school system. We have all agreed that the students, parents and teachers, as well as the community must address this situation with equal energy and commitment. We are seeing significant changes already in addressing some of the issues to address the gap. One is the KIPP Program. This community has established a Education Coalition that consists of 27 different organizations and some members of the Coalition are non-profit youth programs. All programs have experienced some success. The vision of that Education Coalition is for Buncombe County to have a number one graduation rate by the year 2010. There is a critical need in our community and they ask that when City Council appoints new School Board members that Council be selective and take strong consideration with emphasis on educational opportunities for all the youth in Asheville. We are failing miserably at that at this point as evident by the statistical data that shows a disparity in every category for students that are not in the majority category. This is a community effort and we all need to be involved, but we have to agree that our society, as it exists today, expects the school system to educate our youth. He said that when City Council begins looking at appointing a School Board member that you keep in mind that we need to address this in order to maintain our society and to improve the opportunities for all our youth.

Litter

Mayor Sitnick stressed that City Council is serious about the City's efforts to clean up Asheville. With regard to that, she said staff is instructed to report back on the following issues: how much staff time would be involved; what it the budget impact; what will it take to work with the N. C. Dept. of Transportation for them to clean up their roads that come through Asheville; and what it will take to enforce the law about posting signs on poles. That includes enforcing laws already on the books that require residents and business owners to clean up their own properties.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Comments by Mr. Mickie MaHaffey

Mr. Mickie MaHaffey, representative of Peacemakers, said that he had a lot of suggestions with regard to cleaning up Asheville and would meet with the Mayor on those suggestions. He encouraged City Council to continue to scrutinize the budget as much as possible. He said the curb on Haywood and Walnut Street is very difficult for wheelchairs and even though he's told the curb meets Code requirement, it still doesn't make it any easier for those wheelchairs to cross the street. He understood that City Council is trying to get some type of temporary shelter for the Transit Center, but also felt that if City Council were the ones waiting in the rain, wind and cold, something would have been done long ago.

Comments by Ms. Shirley Dozier

Ms. Shirley Dozier presented City Council with a resolution regarding donations of taxpayer funds to non-profit organizations which she hoped City Council would adopt. She explained that if non-profit organizations do not reveal their funding sources and expenditures that they be ineligible for taxpayer funding.

Comments by Mr. Peter Dawes

Mr. Peter Dawes emphasized the City should advise the WNC Regional Air Quality Agency that there is a possibility the compressed natural grant may be held up due to the suspension at the state level of local government reimbursement payments since the Agency is considering purchasing two alternative vehicles.

Claims

The following claims were received by the City of Asheville during the period of January 5-25, 2001: William Cagle (Water), Simon Becker (Water), Tonya Henderson (Water), Marsha Ring (Water), Jolene Moody (Water), Frank Green (Water), BellSouth (Water), Michael Ferjack (Water), Candace Peek (Water) and Laura Maltby (Water).

The following claims were received by the City during the period of January 26 – February 1, 2001: Molly Nizamian (Streets), Madge Simpson (Water), Chris Miller (Water) and Bill Chase (Water).

The following claims were received by the City during February 2-8, 2001: David Castlewitz (Water), David Britt (Water) and Wayne Rice (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The City was served with a Complaint on or about October 17, 2000, which is generally described as follows: Debra Garing, et al, vs. Great Smokies Hotel Associates, et al. Nature of the proceeding is compensatory damages for violation of state civil rights.

This matter will be handled by an Fred Barbour, an out-side attorney.

Closed Session

At 7:52 p.m., Councilman Hay moved to go into closed session for the following reasons: (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations – G.S. 143-318.11 (a) (4); and (2) to prevent disclosure of information that is privileged or confidential pursuant to the laws of North Carolina, or not considered a public record within the meaning of Chapter 132 of the General Statutes. The law that renders the information to be discussed confidential is G.S. 160A-168, the Personnel Privacy Act – G.S. 143-318.11 (a) (1). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 9:35 p.m., Councilman Worley moved to come out of closed session. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:35 p.m.

CITY CLERK

Leni Sitnick

MAYOR

Tuesday – February 20, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

Mayor Sitnick said that a space will be available at the City-County Plaza and also at the Speedway for those residents who which to pay tribute to Mr. Dale Earnhardt Sr.

CONSENT:

Bid Award for Bee Tree and Burnette Dam Improvements – For Information Only

Summary: The Regional Water Authority will consider a contract award for the Bee Tree Dam and Burnette Dam Improvements project at their regular meeting on Tuesday, February 20, 2001, at 8:45 am.

Sealed bids were received and opened on Wednesday, January 24, 2001, for the Authority's Bee Tree Dam and Burnette Dam Improvements Project. Five (5) bids were received, with a summary of the bids as follows:

COMPANY	BID
Hickory Construction	$ 5,499,710
Tri-State Consultants	5,567,665
Thalle Construction	5,595,000
Taylor & Murphy	5,872,056
Gilbert Southern	6,708,400

The Water Authority held a special meeting on January 30, 2001, after the staff conducted a thorough investigation of Hickory Construction's bid. Hickory Construction was determined to be well qualified for the work in every respect, and were compliant with the bid instructions with one exception. The exception was the failure to include a one page form with their formal bid which summarized the minority business enterprise subcontracts they were proposing to award if selected as the prime contractor. The investigation revealed conclusive evidence that Hickory Construction had pursued minority businesses during the bid process as required by the Asheville-Buncombe Minority Affairs office, and had achieved the highest use of minority subcontractors of all bidders. The Water Authority determined the omission of the one page form with the bid to be a clerical error and exercised its authority to waive this error as an informality with the full consultation of the Authority's attorney. As part of that decision, the Authority authorized the staff to negotiate a lower contract price with Hickory Construction since all bids exceeded the engineer's estimate.

Extensive negotiations were conducted among the staff, the project engineer (AG&E-Schnabel), and Hickory Construction between February 1 and February 9, 2001. The goal of these negotiations was to achieve reductions without reducing the quality of the completed construction and without eliminating any of the fundamental technical objectives of the project. Ideas for cost reduction were evaluated for conformance with the above technical objective, and then evaluated to determine if they were firm (construction methods which we know now can be changed) or contingent (construction methods which may be changed if certain latent conditions on the present site exist). As a result of these negotiations, a firm reduction in the contract price of $150,480 has been achieved, and contingent options have been identified which may further reduce the final contract price up to a maximum of $121,630.

Some examples of firm reductions achieved include: (1) the use of pipe culverts instead of a temporary bridge for the temporary construction access road across Bee Tree Creek; (2) the placement of on-site excavated rock in mass concrete at the top of the spillway to reduce purchased concrete quantities; (3) the use of on-site rock as channel rip-rap to reduce the volume of quarry stone required; and (4) the stockpiling of existing topsoil to avoid importing topsoil from off-site. Examples of contingent options include: (1) eliminating water pumps during construction in the new dissipator basin if the reduced lake level sufficiently lowers the groundwater table in this area; (2) eliminating rock anchors to support the existing right wall of the spillway chute if a structural analysis performed after sections of the existing spillway are removed confirm this can be safely eliminated; and (3) reducing diving costs at the North Fork reservoir if water levels are significantly lower than normal due to dry weather conditions at time of construction.

The staff has recommended to the Regional Water Authority that they award a contract to Hickory Construction Company at the bid price of $5,499,710, contingent upon the further execution with the contract of a Change Order No. 1 to reduce the contract price by $150,480 to a total of $5,349,230. Further, staff has recommended that contingent options be identified in Change Order No. 1 to specifically state specific agreed prices for each option and the conditions upon which the option will be taken. The election of contingent options would be confirmed by future change orders.

Staff has evaluated the impact of these proposed changes to the bid price on the funds available from the recent $13.3 million water revenue bond sale and have determined sufficient funds exist.

The Water Agreement grants the Regional Water Authority jurisdiction over the award of this contract; staff is providing this information to City Council for information only.

2001 Festivals and Special Events

Summary: The consideration of a motion approving the festivals and special events for 2001.

In March of 1995, the Asheville City Council adopted a Festivals Policy. A segment of that policy requires that City Council approve the list of festivals on an annual basis.

The Parks and Recreation Department met with a Co-sponsorship Task Team in an effort to set forth appropriate criteria to determine the qualifications of organizations applying for co-sponsorships with the City of Asheville. It was determined that the best way to determine qualification was to rate the events as they occurred on the degree that they met the terms of the co-sponsorship agreement and served the citizens of Asheville. The Task Team proposed the following minimum criteria for future co-sponsorships with the City of Asheville:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
5. The proposed event has been planned to facilitate a positive impact to the community.

6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

This year's list for co-sponsorship includes several new events which include: 1st Annual St. Patrick's Day 10K Road Race, Mountain Renaissance Adventure Fair, YMCA's World's Largest Run, Statewide Preservation Commission Conference Dinner, Pathways Pedal Pushers, Asheville Citizen-Times Half Marathon, Smoky Mountain Motorcycle Toy Run.

The Parks and Recreation Department recommends approval of the festivals and special events for 2001.

Non-Warranty Deed for Portion of an Unopened Alley off Conestee Street

Summary: The consideration of a resolution authorizing the execution of a Non-Warranty Deed for a portion of property located between two privately owned properties off Conestee Street.

A request was received from the attorney for James M. Wilson and Audrey Wilson, Co-Trustees of the Irrevocable Trust of Elizabeth Lindsay Wilson on December 29, 2000, requesting that the City execute a non-warranty deed, quitclaiming all government interest if any, in the portion of the trust property that encroaches onto an undeeded strip of land, that has since 1912, been referred to as an alley.

According to the attorney for the Wilsons, the dwelling situated on the property identified as PIN No. 9649.10-26-8359 has existed at the current location for approximately 90 years. The dwelling encroaches into the undeeded strip of land called an alley as shown on an unrecorded Plat prepared by Glenn Haynes dated March 11, 1998. The date of the dedication of this alley is not known.

The Public Works Department staff recommends City Council authorize the execution of a North Carolina Non-Warranty Deed quitclaiming all government interest, if any, in the portion of the property where the encroachment lies.

Agreement with MSD for Sidewalk on State Street

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Metropolitan Sewerage District (MSD), whereby MSD will, in connection with soliciting formal bids for the sewer rehabilitation project for State Street, include at the request of the City of Asheville, the requirement for the installation of sidewalks along State Street, the cost of which shall be paid by the City of Asheville.

The Metropolitan Sewerage District plans to disturb the pavement of State Street for major sewer rehabilitation project. The City has already designated State Street to receive sidewalks. MSD agreed to and did solicit formal bids for the construction and installation of sidewalks along State Street as part of its sewer rehabilitation project for State Street. MSD solicited the formal bids in accordance with N. C. Gen. Stat. Sec. 143-129 and three bids were received as follows:

Company	MB Part	Drug Free	Bond	Bid
Hobson Construction Co. Inc.	100%	Yes	Yes	$618,040
T&K Utilities	0	Yes	Yes	$688,836
Bryant Electric Company	0	Yes	Yes	$847,139

MSD's governing body awarded the project to the lowest responsive bidder, being Hobson Construction Company, Inc., in the amount of $618,040, with $114,970 of that amount being the City's portion for the construction and installation of the sidewalk. MSD has otherwise complied with all statutory requirements in awarding the contract.

The Public Works Department staff recommends City Council authorize the City Manager to enter into an agreement with MSD whereby MSD will cause their contractor to construct and install approved sidewalks along State Street in accordance with City specifications, in an amount not to exceed $114,970 upon assurance from MSD that all statutory bidding laws and requirements have been met.

Dedication of Midway Place

Vice-Mayor Cloninger noted that he has a conflict of interest with this matter.

Summary: The consideration of a resolution acknowledging and accepting a right of way dedication.

Reynolds Mountain Subdivision, LLC, has requested the City to acknowledge the public status of a dedication of right-of-way bordering the subdivision currently under development.

The right-of-way in question is a dedicated but unopened right-of-way. Our investigation shows that it was first dedicated as Midway Place with the recordation of a plat in 1933 (Plat Book 16 at Page 70), as part of Lakeview Park. Midway Place again appears in a resubdivision of property that was recorded in 1955 (Plat Book 29 at Page 12). The right of way was particularly in the City until 1960, when the entire area was annexed.

Properties located on the south side of this right-of-way have been sold and developed with homes. Tax maps indicate that the right-of-way is public, and field observation shows that it has been improved for part of its length, but currently only serves one residence, essentially as a private driveway.

In 1998 the developer obtained City approval for a subdivision of the part of the Reynolds Mountain Subdivision that is in the City. This consists of all or a part of 12 lots located along the north side of Midway Place right-of-way. The approved preliminary plat shows that the street that will serve these lots runs along the northern or uphill side, while the Midway Place right-of-way runs along the southern or downhill side of the lots. The developer at present proposes to use the Midway Place right-of-way for installation of utilities, but wishes to preserve such other rights of use as he may have.

The reason that this matter has come up now is that, despite the above-described indications that the Midway Place right-of-way has been considered public for many years, there is no record that its public status was ever officially recognized by the City or County. Given the age of the original subdivision, this is not unusual, and the record of that action may simply have been lost. Moreover, there are sufficient other acknowledgements of the public status of Midway Place that are matters of record that the City may be estopped from denying it. A search of the Buncombe County records indicates that the Midway Place right-of-way has never been withdrawn from dedication, and a search of the City's records has similarly disclosed no record of withdrawal or abandonment.

Usually, the City is not requested to recognize rights-of-way until whatever improvements are to be installed are complete. However, the developer in this case wishes to have the added measures of the City's official recognition of the Midway Place right-of-way prior to undertaking utility installation within it.

Staff's primary concern is that, by this recognition, the City does not assume responsibility for maintenance of the right-of-way, or for any problems that might arise during construction. The developer has agreed to enter into appropriate agreements with the City to ensure that this is accomplished.

Staff recommends that Council adopt a resolution acknowledging the public status of the Midway Place right-of-way for the purpose of utility installation, and accepting it to the extent that acceptance has not already occurred, subject to the condition that the developer assume all responsibility for its maintenance and for any construction-related issues until the improvements are accepted by the City or other appropriate authority.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

ASHEVILLE SCHOOL BOARD

Mayor Sitnick welcomed School Board Chair Susan Fisher, members of the Asheville School Board, Superintendent Karen Campbell, and Associate Superintendent Alice Hart.

Ms. Fisher then updated City Council on the progress of Asheville City Schools. She reviewed their Emergency/Crisis Guide; the Code of Conduct and Student Rights and Responsibilities Handbook; Gateways to Education Student Accountability Standards and what they mean for elementary school students, middle school students and high school students; and the Parent Handbook 2000-2001 and Report of Progress.

Ms. Fisher, Dr. Campbell and Dr. Hart reviewed and answered various questions from Council regarding the charts they presented for "Reading and Math Achievement Levels 3rd - 8th Grade - Black Students 98, 99, 00", "Reading and Math Achievement Levels 3rd – 8th Grade – All Students 98, 99, 00", and "EOC % Proficient Black Students and All Students 98-99, 99-00."

Discussion surrounded the City Schools drop-out rate, how much time each Board member spends in the schools per month, what is being done to increase parental involvement, the need for computers for all teachers, ways the administration can work with businesses to create opportunities for parents to visit the schools during the day, what happens to suspended students, and thoughts on an elected vs. appointed School Board.

Councilwoman Bellamy asked the School Board work hard to increase parental involvement and to work towards the elimination of the achievement gap.

Mayor Sitnick said that since the demographics of Asheville has changed so drastically in the last few years since has asked the City Attorney to investigate the possibility of expanding the School Board.

PACK SQUARE RENAISSANCE PROJECT – INFORMATION KIOSKS

Ms. Karen Tessier, member of the Downtown Commission, said that the Pack Square Conservancy is requesting to install two signs in the Pack Square/City-County Plaza area to provide public information regarding the Pack Square Renaissance Project.

The purpose of the signage is to increase public awareness and enthusiasm about the Pack Square Renaissance Project and to acknowledge those organizations and individuals that have contributed financially to this effort. The theme of the three-sided signs is "History, Heroes and Horizons". The "History" panel will tell the story of Pack Square as it evolved through history. The "Heroes" panel will speak to the long-standing tradition of philanthropy on the square

176

and will acknowledge those who have contributed financially to the Renaissance Project. The "Horizons" panel will describe the vision for recreating these public spaces and will display the illustrations of the conceptual plan. Each sign will measure approximately 8 feet in height and the panels will have a width of approximately 4 feet.

The signs would remain in place through construction. Completion is anticipated in the summer of 2003.

At their February 12, 2001, meeting, the Asheville Parks and Recreation Advisory Board approved this request and suggested that Parks and Recreation staff assist in determining the optimum locations for the signs.

This is for informational purposes only. No Council action is required.

HOUSING TRUST FUND ALLOCATION

Community Development Director Charlotte Caplan said that this is the consideration of approving the recommendations from the Housing & Community Development Committee for loans totaling $400,000 from the City's Housing Trust Fund.

A Request for Proposals for Housing Trust Fund (HTF) loans was issued on December 1, 2000. Eleven applications were received by the due date of January 19. All were essentially complete and eligible for funding. Staff was very pleased with the number, variety, and quality of these applications.

Evaluation Process: A group of four staff from the Planning & Development Department visited all the project sites and evaluated each application using 23 criteria drawn largely from the Housing Trust Fund policies approved by Council last year. Each project was given scores of 0-5 for each criterion, and then the scores were multiplied by a weighting factor of 1, 2, or 3 before being totaled. The highest weighting factor was given for financial capacity, funding requested per unit, affordability, and readiness to proceed. Other important criteria were developer experience, good design, careful budgeting, location, site suitability, and preservation of long-term affordability.

Results: Although all the projects submitted had attractive features and were appropriate for HTF assistance, three stood out in the evaluation process, scoring at least 36 points higher than any of the other eight projects:

- Ron Moser Homes – Glendale Avenue Subdivision (18 units for homeownership)
- Neighborhood Housing Services – Short Street (4 units for homeownership)
- Mountain Housing Opportunities – Compton Place (40 units for elderly rental)

The Housing and Community Development Committee has reviewed the evaluation and recommends the following loans be made, on the terms requested:

Ron Moser Homes: $195,000 at 2% interest with staged repayment as each house is sold
Neighborhood Housing Services: $65,000 at 0% for 30 years (amortizing)
Mountain Housing Opportunities: $140,000 at 0% for 20 years (non-amortizing)

The Housing and Community Development Committee and staff recommend approval of the Housing Trust Fund loans listed above.

A brief discussion was held about the rate of return on the loans but agreed that ultimately Council's goal is to get more units of affordable housing.

Ms. Caplan said that she would get City Council additional information they requested on the applications and the score sheets.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

OUTSIDE AGENCY POLICY

Budget Director Ben Durant said that this is the consideration of a motion approving City Council's outside agency policy.

During a budget worksession on the proposed Fiscal Year 2000-2001 Annual Budget, City Council asked staff to develop an official policy to guide the Outside Agency Committee's process for evaluating outside agency funding requests.

Staff has developed a draft policy, which has been reviewed by the Outside Agency Committee, and is presented for full Council review. At Council's February 6, 2001, worksession, City Council suggested minor changes to the policy and those changes have been made. Key aspects of the recommended policy include the establishment of priority service areas for which Council may direct its outside agency funds, the setting of limits on the number of consecutive years certain agencies can receive City funds, and a focus on funding specific programs rather than general operating expenses.

City staff recommended City Council adopt the outside agency policy.

Upon inquiry of Councilman Hay, it was the consensus of City Council that the policy be amended so that the City will only accept funding requests from outside agencies organized as a 501 (c) corporation, opposed to a 501 (c) (3) corporation. Councilman Hay asked Mr. Durant to make sure that we are not excluding any of our current outside agency contracts.

Mayor Sitnick asked if City Council wanted to consider doing a general across the board percentage reduction in our outside agency budget, in light of the state's decision to withhold local business inventory reimbursement payments to local governments. City Manager Westbrook said that as the budget negotiations are worked out, he would let the Outside Agency Committee know and let them make a recommendation to the full Council, if necessary.

After a brief discussion about when this policy would be implemented, it was the consensus of Council to follow the policy for this fiscal year. However, since the deadline for receiving applications is this week, City staff was instructed to send all applicants the policy immediately and to give them an opportunity to amend their application after they review the policy.

Mayor Sitnick said that she would like a mid-year report by staff outlining how the funds are being spent by the outside agencies who received outside agency funding by the City.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place this item on the next formal City Council agenda.

CIVIC CENTER FUNDING OPTIONS

City Manager Westbrook said that on February 6, 2001, City Council requested staff present information regarding various funding options for renovating the Civic Center.

178

Budget Director Ben Durant then presented the following options, all of which would be to renovate and on-going maintenance of the Civic Center:

Hotel & Motel Tax
Rate of Tax: 1% on gross receipts derived from the rental of any room, lodging or accommodation
Distribution of Tax: Levied throughout Buncombe County. Collected by Buncombe County. Proceeds of net collection costs distributed to the City of Asheville.
Projected Annual Proceeds: Fiscal Year 2001-02 - $1,000,000
Tax Impact: Approximately 95% of all room rentals are made to people living outside of Buncombe County

Food & Beverage Tax
Rate of Tax: 1% of the sales price of prepared food and beverages sold within the County at retail for consumption
Distribution of Tax: Levied throughout Buncombe County. Collected by Buncombe County. Proceeds of net collection costs distributed to the City of Asheville.
Projected Annual Proceeds: Fiscal Year 2001-02 - $2,800,000
Tax Impact: City – 25%; Regional – 45%; Tourists – 30%

Additional 1-Cent Local Option Sales Tax
Rate of Tax: 1% of sales within Buncombe County
Distribution of Tax: Levied throughout Buncombe County. Collected by Buncombe County. Proceeds of net collection costs distributed to Buncombe County, Asheville and other municipalities based on population
Projected Annual Proceeds: Fiscal Year 2001-02 - $9,704,168;
Fiscal Year 2002-03 - $9,898,251;
Fiscal Year 2003-04 - $10,096,216;
Fiscal Year 2004-05 - $10,298,141;
Fiscal Year 2005-06 - $10,504,103
Tax Impact: Inside County – 50%; Outside County – 50%

Property Tax Rate
Rate of Tax: 1-cent equals an additional $450,000
Distribution of Tax: Levied throughout City of Asheville. Collected by Buncombe County. Proceeds of net collection costs distributed to Asheville.
Projected Annual Proceeds: Fiscal Year 2001-02 – Determined by tax rate
Tax Impact: 100% of tax borne by Asheville residents

Mayor Sitnick felt that prescription drugs and food should be excluded from the additional one-cent local option sales tax, even though there would be a reduction in revenue.

It was pointed out that the Buncombe County Tourism Development Authority has asked for an additional one-cent on the hotel/motel tax for product development and Buncombe County is requesting a one-cent local option sales tax. These are in addition to City Council's proposed request for a one-cent food/beverage tax. It was noted that if the County is not successful with their one-cent local option sales tax, then the City needs to have a fallback – which may be the food/beverage tax.

All of Council agreed that public support needs to be built with a lot of good publicity and a lot of public comment sought.

City Manager Westbrook said that he has received a letter from Buncombe County Manager Wanda Greene asking for City Council's endorsement of their local option sales tax request.

Councilman Peterson felt it was very important to start soliciting public comment on some new funding source before the draft bill deadline of March 14, 2001. City Attorney Oast said that he will be in Raleigh on Monday (February 26, 2001) and will talk with our legislators about introducing a blank bill with a general description on this issue which will give the City some additional time within which to decide how the draft bill should read.

Mayor Sitnick stated that she would not raise the property taxes of the Asheville residents to renovate the Civic Center when it is used by 80% of people who live outside Asheville.

Councilman Worley said the City should go on record supporting Buncombe County's request, but make it clear that the City of Asheville is looking for a food/beverage tax as a back-up. He suggested the City asking Buncombe County for their support of a food/beverage tax as well.

Mayor Sitnick said that there is already some community knowledge and support for Buncombe County's local option sales tax by managers and mayors around our region.

Vice-Mayor Cloninger suggested the City Manager work with the County Manager regarding how the City and the County can work together in supporting both the County's one-cent local option sales tax and the City's request for the food/beverage tax. He asked that the City Manager report back to City Council next week on the outcome of that meeting. He felt the City and the County should not be competing with each other on this issue.

City Attorney Oast said that a bill was introduced (HB 99 – Local Tax Menu With Voter Approval) to provide statewide authority for cities and counties to levy various local option taxes. The revenue options are subject to local voter approval. He said that may be something that Asheville can have to fall back on as well.

Councilman Peterson said that our state legislators want to see significant public support on this issue. If we don't have that community support they may not want to introduce or support our bill. If, in the next few weeks we don't find that support, perhaps this fall we can put something on the general election ballot and then prove to our legislators that we do have that support.

Mayor Sitnick said that we will be looking at a public input session, possibly with Buncombe County.

City Attorney Oast said that with regard to the legislative package, he is pursuing the traffic enforcement cameras, the suspension of bidding and contracting laws for public projects, and the non-betterment relocation costs matter.

REPORTS ON BOARDS AND COMMISSIONS

At the request of Mayor Sitnick, City Attorney Oast updated City Council on the Clean Air Community Trust. The City Attorney was directed to work with the County on establishing a Trust to fulfill the purpose of the Clear Air Community Trust outside of the Interlocal Agreement. It was also the consensus of City Council to have the City Clerk begin advertising for vacancies in the next quarterly appointment process.

Mayor Sitnick said that Ms. Kim McGuire, Community Foundation of Western North Carolina, has invited the City Council to appoint a representative to serve on the Board of Directors of a newly formed Education Coalition. The Coalition is a collaboration of two public school systems, more than a dozen non-profit organizations, five higher education institutions, and other community leaders in Buncombe County. This Coalition will establish standards and improve coordination and evaluation of educational services in an effort to significantly decrease the high school drop-out rate, as well as strengthen students' ability to be successful citizens. Councilman Worley moved to waive the rules and take formal action at this meeting. This motion was seconded by Vice-Mayor Cloninger and carried unanimously. Vice-Mayor Cloninger moved to appoint Councilwoman Terry Bellamy, as the City's representative on the Education Coalition Board of Directors. This motion was seconded by Councilman Worley and carried unanimously.

It was the consensus of City Council to interview Mr. James T. Fink for a vacancy on the Noise Ordinance Appeals Board.

Councilwoman Field reported that good goals were developed at a recent Downtown Commission retreat.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 6:20 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – February 27, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: Vice-Mayor M. Charles Cloninger

INVOCATION

Councilman Peterson asked for a moment of silence for Mr. Dale Earnhardt Sr.

ADDITION TO THE AGENDA

City Attorney Oast asked that a resolution endorsing legislative requests for 2001 Session of the North Carolina General Assembly be added to the Agenda under Other Business.

I. PROCLAMATIONS:

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 13, 2001, AND THE WORKSESSION HELD ON FEBRUARY 20, 2001

B. MOTION APPROVING THE FESTIVALS AND SPECIAL EVENTS FOR 2001

Summary: The consideration of a motion approving the festivals and special events for 2001.

In March of 1995, the Asheville City Council adopted a Festivals Policy. A segment of that policy requires that City Council approve the list of festivals on an annual basis.

The Parks and Recreation Department met with a Co-sponsorship Task Team in an effort to set forth appropriate criteria to determine the qualifications of organizations applying for co-sponsorships with the City of Asheville. It was determined that the best way to determine qualification was to rate the events as they occurred on the degree that they met the terms of the co-sponsorship agreement and served the citizens of Asheville. The Task Team proposed the following minimum criteria for future co-sponsorships with the City of Asheville:

1. The requesting applicant must represent a non-profit organization as defined by state or federal tax law.
2. The requesting applicant/organization does not discriminate on the basis of race, color, creed, sex, sexual orientation, age, political or religious affiliation, ethnicity, national origin or economic standing.
3. The proposed event is community focused and recreational in nature.
4. The proposed event is open to the general public.
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6. Eligibility for co-sponsorship status is based on successful completion and submittal of application, agreements, letters of petition and/or contracts within the specified period of time.

This year's list for co-sponsorship includes several new events which include: 1st Annual St. Patrick's Day 10K Road Race, Mountain Renaissance Adventure Fair, YMCA's World's Largest Run, Statewide Preservation Commission Conference Dinner, Pathways Pedal Pushers, Asheville Citizen-Times Half Marathon, Smoky Mountain Motorcycle Toy Run.

The Parks and Recreation Department recommends approval of the festivals and special events for 2001.

C. RESOLUTION NO. 01-19 - RESOLUTION AUTHORIZING THE MAYOR TO CONVEY BY N.C. NON-WARRANTY DEED THE CITY'S INTEREST, IF ANY, IN A PORTION OF AN UNOPENED ALLEY LOCATED BETWEEN TWO PRIVATELY-OWNED PROPERTIES OFF CONESTEE STREET

Summary: The consideration of a resolution authorizing the execution of a Non-Warranty Deed for a portion of property located between two privately owned properties off Conestee Street.

A request was received from the attorney for James M. Wilson and Audrey Wilson, Co-Trustees of the Irrevocable Trust of Elizabeth Lindsay Wilson on December 29, 2000, requesting that the City execute a non-warranty deed, quitclaiming all government interest if any, in the portion of the trust property that encroaches onto an undeeded strip of land, that has since 1912, been referred to as an alley.

According to the attorney for the Wilsons, the dwelling situated on the property identified as PIN No. 9649.10-26-8359 has existed at the current location for approximately 90 years. The dwelling encroaches into the undeeded strip of land called an alley as shown on an unrecorded Plat prepared by Glenn Haynes dated March 11, 1998. The date of the dedication of this alley is not known.

The Public Works Department staff recommends City Council authorize the execution of a North Carolina Non-Warranty Deed quitclaiming all government interest, if any, in the portion of the property where the encroachment lies.

RESOLUTION BOOK NO. 26 – PAGE 276

D. RESOLUTION NO. 01-20 - RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT WITH THE METROPOLITAN SEWERAGE DISTRICT FOR THE INSTALLATION OF SIDEWALKS ALONG STATE STREET

Summary: The consideration of a resolution authorizing the City Manager to enter into an agreement with the Metropolitan Sewerage District (MSD), whereby MSD will, in connection with soliciting formal bids for the sewer rehabilitation project for State Street, include at the request of the City of Asheville, the requirement for the installation of sidewalks along State Street, the cost of which shall be paid by the City of Asheville.

The Metropolitan Sewerage District plans to disturb the pavement of State Street for major sewer rehabilitation project. The City has already designated State Street to receive sidewalks. MSD agreed to and did solicit formal bids for the construction and installation of sidewalks along State Street as part of its sewer rehabilitation project for State Street. MSD solicited the formal bids in accordance with N. C. Gen. Stat. Sec. 143-129 and three bids were received as follows:

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Hobson Construction Co. Inc.	100%	Yes	Yes	$618,040
T&K Utilities	0	Yes	Yes	$688,836
Bryant Electric Company	0	Yes	Yes	$847,139

MSD's governing body awarded the project to the lowest responsive bidder, being Hobson Construction Company, Inc., in the amount of $618,040, with $114,970 of that amount being the City's portion for the construction and installation of the sidewalk. MSD has otherwise complied with all statutory requirements in awarding the contract.

The Public Works Department staff recommends City Council authorize the City Manager to enter into an agreement with MSD whereby MSD will cause their contractor to construct and install approved sidewalks along State Street in accordance with City specifications, in an amount not to exceed $114,970 upon assurance from MSD that all statutory bidding laws and requirements have been met.

RESOLUTION BOOK NO. 26 – PAGE 279

E. RESOLUTION NO. 01-21- RESOLUTION ACKNOWLEDGING MIDWAY PLACE AS A PUBLIC RIGHT-OF-WAY

Summary: The consideration of a resolution acknowledging and accepting a right of way dedication.

Reynolds Mountain Subdivision, LLC, has requested the City to acknowledge the public status of a dedication of right-of-way bordering the subdivision currently under development.

The right-of-way in question is a dedicated but unopened right-of-way. Our investigation shows that it was first dedicated as Midway Place with the recordation of a plat in 1933 (Plat Book 16 at Page 70), as part of Lakeview Park. Midway Place again appears in a resubdivision of property that was recorded in 1955 (Plat Book 29 at Page 12). The right of way was particularly in the City until 1960, when the entire area was annexed.

Properties located on the south side of this right-of-way have been sold and developed with homes. Tax maps indicate that the right-of-way is public, and field observation shows that it has been improved for part of its length, but currently only serves one residence, essentially as a private driveway.

In 1998 the developer obtained City approval for a subdivision of the part of the Reynolds Mountain Subdivision that is in the City. This consists of all or a part of 12 lots located along the north side of Midway Place right-of-way. The approved preliminary plat shows that the street that will serve these lots runs along the northern or uphill side, while the Midway Place right-of-way runs along the southern or downhill side of the lots. The developer at present proposes to use the Midway Place right-of-way for installation of utilities, but wishes to preserve such other rights of use as he may have.

The reason that this matter has come up now is that, despite the above-described indications that the Midway Place right-of-way has been considered public for many years, there is no record that its public status was ever officially recognized by the City or County. Given the age of the original subdivision, this is not unusual, and the record of that action may simply have been lost. Moreover, there are sufficient other acknowledgements of the public status of Midway Place that are matters of record that the City may be estopped from denying it. A search of the Buncombe County records indicates that the Midway Place right-of-way has never been withdrawn from dedication, and a search of the City's records has similarly disclosed no record of withdrawal or abandonment.

Usually, the City is not requested to recognize rights-of-way until whatever improvements are to be installed are complete. However, the developer in this case wishes to have the added measures of the City's official recognition of the Midway Place right-of-way prior to undertaking utility installation within it.

Staff's primary concern is that, by this recognition, the City does not assume responsibility for maintenance of the right-of-way, or for any problems that might arise during construction. The developer has agreed to enter into appropriate agreements with the City to ensure that this is accomplished.

Staff recommends that Council adopt a resolution acknowledging the public status of the Midway Place right-of-way for the purpose of utility installation, and accepting it to the extent that acceptance has not already occurred, subject to the condition that the developer assume all responsibility for its maintenance and for any construction-related issues until the improvements are accepted by the City or other appropriate authority.

RESOLUTION BOOK NO. 26 – PAGE 280

F. MOTION APPROVING CITY COUNCIL OUTSIDE AGENCY POLICY

Summary: This is the consideration of a motion approving City Council's outside agency policy.

During a budget worksession on the proposed Fiscal Year 2000-2001 Annual Budget, City Council asked staff to develop an official policy to guide the Outside Agency Committee's process for evaluating outside agency funding requests.

Staff has developed a draft policy, which has been reviewed by the Outside Agency Committee, and is presented for full Council review. At Council's February 6, 2001, worksession, City Council suggested minor changes to the policy and those changes have been made. Key aspects of the recommended policy include the establishment of priority service areas for which Council may direct its outside agency funds, the setting of limits on the number of consecutive years certain agencies can receive City funds, and a focus on funding specific programs rather than general operating expenses.

City staff recommends City Council adopt the City's recommended outside agency policy.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Worley moved for the adoption of the Consent Agenda. This motion was seconded by Councilwoman Bellamy and carried unanimously.

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

A. SELECTION OF INTERVIEWEES FOR SCHOOL BOARD

After reviewing all written responses to City Council questions, it was the consensus of City Council to have the City Clerk arrange interviews for Adam Baylus, Lewis Isaac, Barbara

Blackburn, John Legerton, Mark Gordon, Richard Sandoval, Keith Thomson, and Allison Jordan on March 6, 2001, beginning at 5:00 p.m. in the Council Chamber of the City Hall Building.

V. NEW BUSINESS:

A. RESOLUTION NO. 01-22 – RESOLUTION MAKING ALLOCATIONS FROM THE CITY'S HOUSING TRUST FUND

Councilman Hay moved to excuse Councilwoman Bellamy from participating in this matter. This motion was seconded by Councilman Worley and carried unanimously.

Ms. Charlotte Caplan, Community Development Director, said that this is the consideration of approving the recommendations from the Housing & Community Development Committee for loans totaling $400,000 from the City's Housing Trust Fund.

A Request for Proposals for Housing Trust Fund loans was issued on December 1, 2000. Eleven applications were received by the due date of January 19. All were essentially complete and eligible for funding. We were very pleased with the number, variety, and quality of these applications.

Evaluation Process: A group of four staff from the Planning & Development Department visited all the project sites and evaluated each application using 23 criteria drawn largely from the Housing Trust Fund policies approved by Council last year. Each project was given scores of 0-5 for each criterion, and then the scores were multiplied by a weighting factor of 1, 2, or 3 before being totaled. The highest weighting factor was given for financial capacity, funding requested per unit, affordability, and readiness to proceed. Other important criteria were developer experience, good design, careful budgeting, location, site suitability, and preservation of long-term affordability.

Results: Although all the projects submitted had attractive features and were appropriate for HTF assistance, three stood out in the evaluation process, scoring at least 36 points higher than any of the other eight projects:

- Ron Moser Homes – Glendale Avenue Subdivision (18 units for homeownership)
- Neighborhood Housing Services – Short Street (4 units for homeownership)
- Mountain Housing Opportunities – Compton Place (40 units for elderly rental)

The Housing and Community Development Committee has reviewed the evaluation and recommends the following loans be made, on the terms requested:

Ron Moser Homes: $195,000 at 2% interest with staged repayment as each house is sold
Neighborhood Housing Services: $65,000 at 0% for 30 years (amortizing)
Mountain Housing Opportunities: $140,000 at 0% for 20 years (non-amortizing)

The Housing and Community Development Committee and staff recommend approval of the Housing Trust Fund loans listed above.

Councilman Worley said that he is supportive of the projects, however, he did want to mention a couple of his concerns. He said that his concern was primarily the terms of two of the grants which provided for both zero percent interest and on one of them zero amortization over the twenty year period of the loan. His concern is that in creating the Housing Trust Fund, one of the things talked about in terms of justifying the creation of it and justifying the penny tax was the revolving nature of the Trust Fund. He understands in these two situations that there are other factors that off-set the lack of interest and on one the lack of any amortization. He would like to see us, at least in the early stages of the creation of the Trust Fund though, work a little harder to make sure it remains revolving so that we can keep turning it over and reap multiple benefits from the use of those funds. He asked the Housing and Community Development Committee take his suggestions into account in the next year's process.

Councilman Hay said that one of the nice things about the Housing Trust Fund is that it is our money, unlike Community Development Block Grant Funds where were operate within someone else's rules. Because it is our money, we can change our rules as we go along and we can learn from experience. We can also, from year to year, be flexible on what we think the needs are and set different priorities.

Upon inquiry of Councilman Hay, Ms. Caplan said that the polices for the Trust Fund outline that staff will come back to City Council within 90 days of the end of the fiscal year and report to Council about the progress of this year's program. In addition, Council will establish priorities for the coming fiscal year. She felt it might be wise to vary those priorities from year to year and keep it responsive to local conditions.

Upon inquiry of Councilwoman Field, Ms. Caplan gave a brief description about each of the three projects.

Mayor Sitnick felt it might be a good idea if a group of non-profit and for-profit representatives, Ms. Caplan and a City official go to Raleigh next year to discuss enhancing the State Housing Trust Fund.

Upon inquiry of Mayor Sitnick, Councilwoman Field said that Buncombe County is working on some guidelines to waive the tipping fees at the landfill for non-profit and for-profit developers who are remodeling a home on a lot to rebuild affordable homes.

Mayor Sitnick suggested the corporate construction material neighbors be contacted to see if they would be willing to hold damaged goods (like torn insulation) to be recycled or reused by people who are building affordable housing in our community.

Upon inquiry from the audience, Mr. Scott Dedman, Executive Director of Mountain Housing Opportunities, said that currently the proposed apartments on Compton Place are just off the transportation route. However, he has talked with the Transit Services Manager and he has indicated a willingness, at least on a trial basis once the apartments are built, to see how much demand there is to extend the route and if it is being used, to continue that in the future.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved to adopt Resolution No. 01-22. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 283

B. RESOLUTION NO. 01-23 - RESOLUTION APPOINTING MEMBERS TO THE BUNCOMBE COUNTY TOURISM DEVELOPMENT AUTHORITY

Councilwoman Bellamy said that this is the consideration of appointing members to the Buncombe County Tourism Development Authority.

Don Tomlinson (owner or operator of hotel over 100 rooms) has resigned as a member of the Buncombe County Tourism Development Authority, thus leaving an unexpired term until

August 30, 2003. In addition, Barbara McEwan (owner or operator of hotel less than 100 rooms) has resigned leaving an unexpired term until August 30, 2001.

City Council unanimously appointed Herman Turk (owner or operator of hotel over 100 rooms) to fill the unexpired vacancy of Mr. Tomlinson, term to expire August 30, 2003, or until his successor has been appointed.

On February 13, 2001, City Council interviewed Victor Trantham and Catherine Sklar for the vacancy of an owner or operator of hotel less than 100 rooms.

After each Councilmember (Mayor not voting), Mr. Trantham received 4 votes and Ms. Sklar received one vote. Therefore, Victor Trantham (owner or operator of hotel less than 100 room) was appointed to fill the unexpired term of Ms. McEwan, term to expire August 30, 2001, and then to serve a full three year term, term to expire August 30, 2004, or until his successor has been appointed.

Mayor Sitnick said both Mr. Trantham and Ms. Sklar are good people and represent their industry well, however, there is one philosophical difference she has with both of them that does not allow her in good conscience to vote either one to the Buncombe County Tourism Development Authority. She explained that the average room tax across the state is 5-6%. The room tax in Asheville is currently 3% and none of that money is earmarked to help the Asheville taxpayers who almost totally supports the infrastructure that welcomes the tourist here. The Tourism Development Authority has lobbied the state legislature for a room tax increase of one cent, to raise the room tax to 4% (with no money earmarked to help with infrastructure). Both candidates don't feel the need to bring the room tax to 5-6% with perhaps earmarking some of that money back to the community to help with infrastructure. Therefore, she could not vote to appoint either candidate.

RESOLUTION BOOK NO. 26 – PAGE 284

VI. OTHER BUSINESS:

A. RESOLUTION NO. 01-24 - RESOLUTION ENDORSING LEGISLATIVE REQUESTS FOR 2001 SESSION OF NORTH CAROLINA GENERAL ASSEMBLY

City Attorney Oast reviewed the following legislative requests:

1. The City's legislative delegation is respectfully requested to introduce bills for consideration in the 2001 Session of the North Carolina General Assembly, to address the following matters:

   a. Provide the City with authority to enforce traffic signal (red light) violations through the use of remote photographic monitoring and civil penalties, similar to the process currently used by the City of Charlotte, among others; and

   b. Provide for the suspension of the force account cost limitations of N.C.G.S. 143-135 in connection with the construction of the City's proposed skateboard park on Cherry Street.

2. The City fully supports House Bill 43, which provides for the inclusion of agencies organized pursuant to the Interlocal Agreements Act among those entities

exempted from the payment of non-betterment costs for waterline relocation pursuant to G.S. 136-27.1, and thanks its legislative delegation for its continued hard work on this issue.

3. The City Council fully supports the introduction and consideration of legislation proposed by Buncombe County, entitled "An Act to Authorize Supplemental Sources of Revenue for Infrastructure and Capital Improvements," for authority to adopt a time-limited, one percent local sales tax, targeted to specific projects for Buncombe County and its constituent municipalities, including the City of Asheville.

4. As an alternative to Buncombe County's sales tax request, and to be considered only in the event that said request is not introduced or fails passage, the City requests the introduction of a bill to provide the City with authority for a one percent prepared food and beverage tax in the City of Asheville, with the proceeds to be used for capital projects in the City that benefit the region and support the tourism industry, including renovation and maintenance of the Asheville Civic Center.

5. The City fully endorses and supports its legislative delegation's favorable consideration of House Bill 99, "An Act to Authorize Counties and Cities to Levy a Menu of Local Option Taxes if Approved by the Voters", especially in the event that items 3 and 4, above, fail for any reason.

Mayor Sitnick felt that prescription drugs and food should be excluded from the additional one-cent local option sales tax, even though there would be a reduction in revenue. City Attorney Oast said that the County proposal does not tax food.

Councilman Peterson said that he has talked with a number of the Buncombe County Commissioners and they are supportive of the idea that if their one-cent local option sales tax does not pass that they would support the one percent prepared food and beverage tax County-wide (not only in the City of Asheville), with the money going to the renovation of the Civic Center.

City Attorney Oast explained that he was limiting, whatever Asheville asks for, to just the City of Asheville's jurisdiction. If Buncombe County would like to join in with that, he would be happy to talk to them.

Councilman Worley said it was important to emphasize that we are not discussing a one-cent local option sales tax and a one-cent prepared food and beverage tax. If the County is successful in it's request for a one-cent local option sales tax, then the City will ask for it's one-cent prepared food and beverage tax to be withdrawn. If the County is not successful, then we are asking for either a one-cent prepared food and beverage tax or a menu of items to chose from subject to voter approval.

Councilman Peterson was concerned with the underlined language "as an alternative to Buncombe County's sale tax request, and to be considered only in the event that said request is not introduced or fails passage, the City requests the introduction of a bill ... for a one percent prepared food and beverage tax in the City of Asheville ...." He said that won't happen until after a deadline and if the legislators follow that language exactly, then a prepared food and beverage tax wouldn't get introduced. He explained that City Council needs to be pursuing both. City Attorney Oast responded that he understood Councilman Peterson's concern and would re-phase that particular provision or at Councilman Peterson's suggestion, delete the underlined language totally. In addition, he would make it clear to the legislators what Council's intentions are on that in his transmittal letter.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilwoman Field moved for the adoption of Resolution No. 01-24. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 285

B. CLAIMS

The following claims were received by the City of Asheville during the period of February 2-8, 2001: Princess Dawidalle (Transit Services), BellSouth (Water), Doug Duckett (Water), Darren Payne (Finance) and Kelly Ramsey (Streets).

These claims have been referred to Asheville Claims Corporation for investigation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

Request for Resolution of Support to the N.C. Dept. of Transportation for a Pedestrian Safety Initiative on New Haw Creek Road

Mr. Bob Brummond, representing the Haw Creek Community Association, requested City Council to adopt a resolution of support to the N. C. Dept. of Transportation (DOT) for a pedestrian safety initiative on New Haw Creek Road. They are requesting the DOT to replace the existing dirt and grass area currently functioning as a shoulder on both sides of New Haw Creek Road with a three foot wide paved shoulder on each side. This request is for a demonstration project which would greatly improve the safety and free travel for people who drive cars on the road, people who use foot power, and bicyclists, all of whom use the roadway. They ask that this demonstration project begin at the entrance to Sondley Estates, and move south as far as the funding will allow. They further ask that a six inch wide rumble strip treatment be placed at the white line separating the main roadway from the paved shoulder area. This rumble treatment would be continuous along each side of the road. If there are funds available, they request a six inch wide rumble strip treatment be installed in the center yellow lines before, through, and after the curve at Antioch Church. They need to determine if this remedy can reduce the incidence of center line crossover at this dangerous curve. He urged City Council endorse the Haw Creek Pedestrian Safety Demonstration Project and to call upon the DOT to implement the terms of the proposal outlined above.

At the City Manager's request, it was the consensus of City Council to have City staff re-work the resolution in order for it to have a better chance of receiving favorable consideration by the DOT.

Comments by Ms. Sharon Martin

Ms. Sharon Martin, resident in Montford community, spoke about Buncombe County's one-cent local option sales tax and hoped the City would stand firm that the tax does not include prescription drugs or food, however, the tax is a regressive tax. She noted that the City's food and beverage tax is geared towards renovation of the Civic Center. With our community facing affordable housing needs and the budget crisis passed down from the State, she questioned the City's priorities. She felt that the Civic Center is an entertainment venue and the actual needs of citizens should come before entertainment.

Comments by Mr. Scott Osborne

Mr. Scott Osborne shared some ideas about the Civic Center. He felt that Asheville should grasp what it has and market it in an aggressive manner. If the Civic Center was turned into an art and cultural center, this would be perfect for many of the retail entertainment sections of downtown. He felt if Asheville attracts an outside interest in building a privately funded first-rate high tech sports and convention center, then Asheville could have the best of both works.

Comments by Mr. Mickie Mahaffee

Mr. Mickie Mahaffee, representing Peacemakers, felt that even if there was no Civic Center, Asheville still is a thriving entertainment center. He felt that instead of spending money on the Civic Center, we should look at the needs of the local people and put that money and energy into them. He felt that entertainment is a privilege, not a necessity.

Comments by Mr. Dan Waterman

Mr. Dan Waterman, representing North Carolina Hemp, began educating City Council on prejudice, marijuana and the Jim Crow laws.

Comments by Mr. Dave Mittler

When Mr. Dave Mittler, representing Asheville People for Cannabis Education, requested ten minutes to educate the public on cannabis, Mayor Sitnick stated that she felt Mr. Mittler already had representation through Mr. Waterman's organization (as they both were dressed in clown costumes, arrived together and were sitting together). Mr. Mittler responded that his organization was new even with a few members present in the Council Chamber. Mayor Sitnick then allowed Mr. Mittler three minutes to speak. During the three minutes, Mr. Mittler argued that the Mayor was not being uniform in her time limits for public comment.

Mayor Sitnick asked the City Attorney to draft a policy for Council's consideration that allows City Council to understand group representation. She suggested some type of document that acknowledges that there is such a group, that the group has a board and structure, and that the person requesting to speak has been officially appointed as the spokesperson for that group. She felt that some groups have taken advantage of City Council's ten minute policy by organizing a group that day or week just to address Council for ten minutes.

VIII. ADJOURNMENT:

At 7:29 p.m., Councilwoman Field moved to adjourn the meeting. This motion was seconded by Councilman Hay and carried unanimously.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – March 6, 2001 - 3:00 p.m.

Worksession

Present:	Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson
Absent:	None

CONSENT:

Utility Agreements with NC DOT for Hendersonville Highway, Sweeten Creek Road, Pisgah Highway Phase II and Bridge 512 on Old US 70

Summary: The consideration of a resolution authorizing the Mayor to execute four Utility Agreements with the N. C. Dept. of Transportation and an Indemnification Agreement with the Regional Water Authority.

The Regional Water Authority received a report from staff in October 2000 regarding a proposed Utility Agreement with the N. C. Dept. of Transportation (NCDOT) for the Pisgah Highway Phase II Project. In November 2000, the Authority adopted a resolution authorizing the Chairman to execute a three-party Utility Agreement among the NCDOT, the City and the Authority. In December 2000, the City Council rejected a three-party agreement in favor of a two-party agreement between the City and NCDOT. The difficult issue at the center of the differences between the Authority and City was the City's concern over the possible withholding of Powell Bill (municipal street maintenance) funds from the City by the NCDOT.

Since December 2000, the Authority's attorney and the City Attorney have been negotiating a separate Indemnification Agreement to protect the Authority's interests in the event that the Director of Water Resources finds deficiencies in the water line work by NCDOT's contractor and the City chooses to settle with the NCDOT to avoid the withholding of Powell Bill funds.

The Authority approved resolutions at its February 20, 2001, meeting recommending that the City of Asheville execute four separate Utility Agreements with the NCDOT, one for each of four projects, in a form acceptable to the Authority's attorney, and subject to the execution of an Indemnification Agreement acceptable to the Authority's attorney between the City and the Authority. The four projects included are as follows:

(1) Pisgah Highway Phase II, Budget $628,600 in 329 Fund (2001 Revenue Bonds), Completion 2002.
(2) Hendersonville Highway, Budget $235,180 in 329 Fund (2001 Revenue Bonds), Completion 2001.
(3) Sweeten Creek Road Phase II, Budget $1,245,770 in 335 Fund (Future Revenues, Proposed 2002 Revenue Bonds), Completion 2003.
(4) Bridge 512 on Old US 70 in Swannanoa, Budget $5,000 in 329 Fund (2001 Revenue Bonds), Completion 2002. *Note: NCDOT is paying all "non-betterment" costs for this project since the existing water line was outside NCDOT right-of-way before this project was proposed. The City will pay only for the cost of added valves on the relocated water main, necessary to conform to current Asheville Standard Specifications.*

Staff recommends that the Asheville City Council authorize the Mayor to execute Utility Agreements with NCDOT and execute an Indemnification Agreement between the Authority and

City for Pisgah Highway Phase II, Hendersonville Highway, Sweeten Creek Road Phase II and Bridge 512 on Old US 70 Projects.

There was discussion regarding the Water Authority's request for an indemnification agreement.

Amendment to Water 35 Fund for NC DOT Sweeten Creek Road Phase II Waterline Replacement Project

Summary: The consideration of a budget amendment in the 35 Fund – Water Major Capital Improvements Fund to provide future funding for the N. C. Dept. of Transportation Project Sweeten Creek Phase II.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds and Appropriated Fund Balance.

The Sweeten Creek Phase II N.C. Dept. of Transportation (NCDOT) Non-Betterment Relocation Project is expected to be complete in Fiscal Year 2002/2003 and will be funded with future funds from the Fiscal Year 2002/2003 Revenue Bond Issue. The construction cost for this project has been estimated by NCDOT to be $1,132,520 and a 10% contingency of $113,250 (including inspection fees) has been included in replacement of parallel 8" and 16" lines with a new 20" water line in Sweeten Creek Road between Roberts Road (near I-40) and Rock Hill Road (near Stockwood Rd). In addition to this NCDOT project, the Fiscal Year 2002/03 Revenue Bond Issue will fund several other NCDOT projects, Water Treatment Plant Improvements, Master Plan Improvements, and Annexation Projects. At this time, it is necessary to approve future funding for the Sweeten Creek Phase II NCDOT Project so that a Utility Agreement can be signed.

The following changes are recommended in the 35 Fund:

	Current	Recommended
Revenues:		
Contribution From Other Funds – Future	$3,438,898	$4,684,668
Appropriations:		
Future NCDOT Water Projects	$3,438,898	$4,684,668

The Regional Water Authority approved the amending of Capital Project Ordinance 82-25 at their January 16, 2001, meeting.

City staff recommends approval of a budget amendment to reflect an increase in the future NCDOT Water Projects with the N. C. Dept. of Transportation to include the Sweeten Creek Phase II Water Line Replacement Project.

2001 Bele Chere Budget Amendment

Summary: The consideration of a budget amendment appropriating revenue and expenditures for the Bele Chere 2001 Festival.

This budget has been approved by Parks and Recreation staff and by the Bele Chere Board on February 21, 2001. This request represents a balanced budget with appropriate revenue offsetting expenditures.

Parks and Recreation Department recommends City Council adopt the budget amendment in order to recognize revenue and appropriate funds for Bele Chere 2001 Festival.

Budget Amendment for Various Transportation Studies

Summary: The consideration of a budget amendment, in the amount of $58,000, to complete various transportation planning projects.

The Transportation Services Division of the Engineering Department requests a change in the professional services operating budget. The amendment would allow several transportation planning studies for the MPO to be completed. One-hundred percent of this money will be reimbursed by the State, City of Woodfin and City of Fletcher. The studies include:

- Charlotte Street Corridor Study - $18,000
- Town of Woodfin Corridor Study - $20,000
- Town of Fletcher Corridor Study - $20,000

The Charlotte Street Corridor Study will be paid with a combination of State Planning (PL) Funds (80%) and City of Asheville Funds (20%). The total cost of this project is $22,500. The additional money requested for this project, $18,000, will be reimbursed by the State after the project is complete.

Since the City of Asheville is the Lead Planning Agency (LPA) for the MPO, other participating towns must work through our budget process to be reimbursed by the State. Both Woodfin and Fletcher will pay bills in full for their project and will seek reimbursement for the 80%. Thus, there will be no net cost to the City of Asheville as it will be treated as a "pass through" account. The 20% matching funds for those projects located in the Towns of Woodfin and Fletcher will be paid by those local governments.

The only cost to the City of Asheville to complete these three studies is $4,500 and that is already budgeted.

City staff requests City Council approve a budget amendment, in the amount of 58,000, to complete various transportation planning projects.

Public Involvement Process and Schedule for Comprehensive Plan Update

Summary: The consideration of a motion approving the public involvement process and schedule for completing the 2010 Plan Update.

As part of the Planning & Development Department work program, staff is preparing to move forward on the public participation portion of the Comprehensive Plan update.
Our proposal is to follow the same participation model that worked quite well with the I-26 Connector Project. Staff would assemble an advisory committee of 20-30 people that cover a broad spectrum of the community. This committee would have a couple of organizational and buy-in meetings at the start of the project, would monitor the process of public involvement, and would make final recommendations at the conclusion of the process.

Public involvement is planned as six area-specific forums at which staff will make an initial "here are some area issues and some ideas for addressing them" presentation and the public will have a significantly longer time at the meeting to respond and provide ideas in a facilitated setting. In effect, we would be combining an educational, visioning and innovations presentation with an opportunity for extensive input. This would be similar to a combination of the Education and Design Forums process used for the I-26 Connector project.

Using the area-specific approach would allow us to move forward with approval of elements of the plan if we ran into delays in some areas and not others. In other words, if there were no controversies with the Center City element but there were concerns in the South or East areas, we could approve the Center City element and work on the problem areas on a different schedule. There would also be one "Citywide Issues" forum after the area-specific forums to address larger scale issues like I-26. The forums would be facilitated by a professional meeting facilitator not associated with the City to insure the neutrality of the facilitation. We would also like to bring in an outside speaker on the importance of good urban design as a "kick-off" event for the participation process.

Preliminary timelines for this involvement process start on March 6, 2001, with City Council public hearing tentatively scheduled on September 25, 2001. This is an aggressive schedule that can be modified and/or lengthened depending on the need for additional public input.

City staff recommends City Council direct staff to initiate the public involvement process for the Comprehensive Plan update.

Councilman Peterson felt that 20-30 people on the steering committee may not be enough. He noted that there are about ten neighborhood groups in each of the six areas and perhaps one person from each neighborhood should be on the steering committee. In addition, one or two businesspeople from along Tunnel Road, Haywood Road, Charlotte Street and Merrimon Avenue should perhaps be appointed to the committee as well. Also, it would be good to have representation from some of the more active churches or non-profits in those areas like UNC-Asheville and A-B Technical Community College. Councilman Peterson also felt that some people may feel that they were intentionally excluded from the steering committee and didn't think the committee make-up should be solely made up by staff.

Mayor Sitnick also felt that there should be representation from the Sustainable Economic Development Implementation Task Force appointed to the committee. She also suggested that staff review the resource lists from boards like the Planning & Zoning Commission and the Board of Adjustment to find possible appointments.

Mr. Shuford said that City Council was welcome to suggest names to staff for possible appointment to the steering committee as well, but cautioned them that if there were too many people, it might not be a cohesive working group. He said that he would provide City Council with a list of staff's recommendations regarding representation on the steering committee.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

2001 ANNEXATION SCHEDULE

Planning & Development Director Scott Shuford passed out to Council some "Annexation Fast Facts" with information on past annexations by the City.

Upon inquiry of Councilwoman Bellamy, Mr. Shuford said that City staff will be reporting to Council, at their March 20, 2001, worksession, information requested from their annual retreat concerning the City's extraterritorial jurisdiction.

Urban Planner II Paul Benson said that this is the consideration of resolutions stating the intent of the City to annex the following five areas: Lowes, Upper Sondley, Old Dominion, Best Inns and in the Arden area.

Starting with the report prepared in June 2000 by Benchmark Inc. City Planning staff have evaluated area surrounding the City of Asheville for annexation feasibility. Using geographic information system analysis the staff has narrowed the set of potentially qualifying areas to 5. Each of these areas meets one or more of the following criteria:

- Minimal water and sewer extension costs
- Clearly urbanized
- Location within urban growth area
- Eliminates inconsistency in corporate limits

The following summary information for each area will provide more detail on how the area meets these criteria, as well as other basic information about the area.

Area	Tax Value	Population	Properties	D.U.	Acres
Lowes Area	$8,715,400.00	219	38	88	72.2
Upper Sondley	$3,039,400.00	21	16	10	17
Best Inn	$2,560,400.00	0	1	0	2.9
Old Dominion	$1,144,600.00	0	1	0	15.5
Arden Area	$15,926,300.00	171	114	72	124.9
Totals	$31,386,100.00	411	170	170	232.5

Mr. Benson then reviewed with Council the following areas:

Lowes Area - This area, located in West Asheville, is characterized by mixed-use development ranging from high-value commercial along Smoky Park Highway, including Lowes, to lower density single-family residences both site-built and manufactured on Old Haywood Road. Infrastructure is also mixed with good service to much of the area, but with some deficiencies, especially in sewer and streets, in a part of the area. This area would close a distinct notch in the existing corporate limits by eliminating the only pocket on land on the south side of Old Haywood Road not in the city.

Upper Sondley - This area consists of a high value single-family residential subdivision, located at the northern end of the Haw Creek valley in East Asheville. This is a developing area with good infrastructure already in place. Annexation would bring in this pocket of development located between the existing corporate limits and the Blue Ridge Parkway.

Best Inns - A single property, that is unquestionably urban in character with a large hotel. Infrastructure is already in place. This annexation would bring in the only quadrant of the Tunnel Road/I-40 access road at Exit 55 that is not already in the city. It would also extend the city to the east along the Tunnel Road/Highway 70 growth corridor.

Old Dominion -- Another single property, with infrastructure in place, clearly urbanized with the current use of a major trucking terminal. This property forms a unique notch in the current corporate limits being bordered to the west, south and east by the city. This is also the only property served by the Sweeten Creek Industrial Park access road not in the city.

Arden - This is the largest of the proposed annexations, extending into the largest urban growth area adjacent to the city. This highly urbanized area is characterized by mixed land use, ranging from industrial to single-family residential. Infrastructure is generally good, but some relatively minor water and sewer upgrades would be needed. Clearly defined borders, and the connection of three existing satellite areas are additional benefits of this proposed annexation.

Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, fix dates for a public informational meeting, and a public hearing on the question of annexation. State law also allows simultaneous annexation of multiple non-adjacent areas.

The following steps and dates meet the process required by State law:

Adoption of Resolutions of Intent	March 13, 2001
Adoption of Plans of Services	March 27, 2001
Public Informational Meeting	May 3, 2001
Public Hearings	May 22, 2001
Adoption of Annexation Ordinances	June 12, 2001
Effective Date of Annexations	June 30, 2002

City staff recommends that City Council adopt the resolutions of intent for the following five areas: Lowes, Upper Sondley, Old Dominion, Best Inns, and Arden area.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

RESCHEDULING OF ITEMS

At 4:30 p.m., Mayor Sitnick said that since the School Board interviews will begin promptly at 5:00 p.m., she felt that the last two items on the agenda today "Litter Control Alternatives" and "Council Rule Regarding Public Address" needed more time for dialogue. Therefore, at the Mayor's request, Councilman Worley moved to reschedule the "Litter Control Alternatives" discussion until Council's worksession on March 20, 2001. This motion was seconded by Councilwoman Bellamy and carried unanimously.

At the request of Mayor Sitnick, it was the consensus of City Council to schedule the discussion regarding "Council Rule Regarding Public Address" as an item on the next formal meeting agenda.

UPDATE ON BUNCOMBE COUNTY SATELLITE JAIL

Mayor Sitnick said that she talked with Buncombe County Commissioner Chairman Ramsey about the County's application for a conditional use permit for the Union Transfer Building. Mr. Ramsey indicated that he was not fully aware of what was going on and he would get back with her on it.

PRE-ARRANGED SCHOOL BOARD VACANCY INTERVIEWS

At 5:00 p.m., City Council interviewed Allison Jordan, Lewis Isaac, Barbara Blackburn, Adam Baylus, John Legerton, Mark Gordon, Richard Sandoval and T. Keith Thompson for vacancies on the Asheville School Board. Interviews were held in the Council Chamber located on the 2nd Floor of the City Hall Building.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:30 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – March 13, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger (excused from meeting at 6:30 p.m.); Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Councilman Worley gave the invocation.

I. PROCLAMATIONS:

A. RECOGNITION OF MS. GREGOR LEE – MISS ASHEVILLE 2001

Mayor Sitnick introduced Ms. Gregor Lee, Miss Asheville 2001. Ms. Lee briefed Council on the Miss Asheville program and explained how she looked forward to representing Asheville.

II. CONSENT:

A the request of Councilman Peterson, Consent Agenda Item "I" was pulled to be discussed separately.

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON FEBRUARY 27, 2001, AND THE WORKSESSION HELD ON MARCH 6, 2001

B. ORDINANCE NO. 2793 - BUDGET AMENDMENT FOR THE WATER 35 FUND TO PROVIDE FUTURE FUNDING FOR THE N.C. DEPT. OF TRANSPORTATION SWEETEN CREEK PHASE II WATER LINE REPLACEMENT PROJECT

Summary: The consideration of a budget amendment in the 35 Fund – Water Major Capital Improvements Fund to provide future funding for the N. C. Dept. of Transportation Project Sweeten Creek Phase II.

By Resolution 82-25 dated October 5, 1982, the Regional Water Authority authorized and budgeted for various capital projects to be funded by Investment Earnings, Contributions From Other Funds and Appropriated Fund Balance.

The Sweeten Creek Phase II N.C. Dept. of Transportation (NCDOT) Non-Betterment Relocation Project is expected to be complete in Fiscal Year 2002/2003 and will be funded with future funds from the Fiscal Year 2002/2003 Revenue Bond Issue. The construction cost for this project has been estimated by NCDOT to be $1,132,520 and a 10% contingency of $113,250 (including inspection fees) has been included in replacement of parallel 8" and 16" lines with a new 20" water line in Sweeten Creek Road between Roberts Road (near I-40) and Rock Hill Road (near Stockwood Rd). In addition to this NCDOT project, the Fiscal Year 2002/03 Revenue Bond Issue will fund several other NCDOT projects, Water Treatment Plant Improvements, Master Plan Improvements, and Annexation Projects. At this time, it is necessary to approve future funding for the Sweeten Creek Phase II NCDOT Project so that a Utility Agreement can be signed.

The following changes are recommended in the 35 Fund:

	Current	Recommended
Revenues:		
Contribution From Other Funds – Future	$3,438,898	$4,684,668
Appropriations:		
Future NCDOT Water Projects	$3,438,898	$4,684,668

The Regional Water Authority approved the amending of Capital Project Ordinance 82-25 at their January 16, 2001, meeting.

City staff recommends approval of a budget amendment to reflect an increase in the future NCDOT Water Projects with the N. C. Dept. of Transportation to include the Sweeten Creek Phase II Water Line Replacement Project.

ORDINANCE BOOK NO. 19 – PAGE 92

C. ORDINANCE NO. 2794 - BUDGET AMENDMENT APPROPRIATING REVENUE AND EXPENDITURES FOR THE 2001 BELE CHERE FESTIVAL

Summary: The consideration of a budget amendment appropriating revenue and expenditures for the Bele Chere 2001 Festival.

This budget has been approved by Parks and Recreation staff and by the Bele Chere Board on February 21, 2001. This request represents a balanced budget with appropriate revenue offsetting expenditures.

Parks and Recreation Department recommends City Council adopt the budget amendment in order to recognize revenue and appropriate funds for Bele Chere 2001 Festival.

ORDINANCE BOOK NO. 19 – PAGE 94

D. MOTION SETTING A PUBLIC HEARING ON MARCH 27, 2001, TO CONSIDER A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT 2 GRANDVIEW PLACE

E. MOTION SETTING A PUBLIC HEARING ON MARCH 27, 2001, TO CONSIDER A CONDITIONAL USE PERMIT FOR THE CONVERSION OF KENILWORTH INN, LOCATED AT 60 CALEDONIA ROAD, TO APARTMENTS

F. MOTION SETTING A PUBLIC HEARING ON MARCH 27, 2001, TO CONSIDER A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT THE CORNER OF CHARLOTTE STREET AND EDWIN PLACE

G. MOTION SETTING A PUBLIC HEARING ON MARCH 27, 2001, REGARDING THE INSTALLMENT CONTRACTS FOR THE PURCHASE OF PROPERTY ON AZALEA ROAD

H. MOTION SETTING A PUBLIC HEARING ON MARCH 27, 2001, TO REZONE PROPERTY LOCATED AT 240 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS DISTRICT TO COMMERCIAL INDUSTRIAL DISTRICT

I. MOTION APPROVING THE PUBLIC INVOLVEMENT PROCESS AND SCHEDULE FOR COMPLETING THE COMPREHENSIVE PLAN UPDATE

This item was removed from the Consent Agenda for discussion.

J. ORDINANCE NO. 2795 - BUDGET AMENDMENT TO COMPLETE VARIOUS TRANSPORTATION PROJECTS

Summary: The consideration of a budget amendment, in the amount of $58,000, to complete various transportation planning projects.

The Transportation Services Division of the Engineering Department requests a change in the professional services operating budget. The amendment would allow several transportation planning studies for the MPO to be completed. One-hundred percent of this money will be reimbursed by the State, City of Woodfin and City of Fletcher. The studies include:

- Charlotte Street Corridor Study - $18,000
- Town of Woodfin Corridor Study - $20,000
- Town of Fletcher Corridor Study - $20,000

The Charlotte Street Corridor Study will be paid with a combination of State Planning (PL) Funds (80%) and City of Asheville Funds (20%). The total cost of this project is $22,500. The additional money requested for this project, $18,000, will be reimbursed by the State after the project is complete.

Since the City of Asheville is the Lead Planning Agency (LPA) for the MPO, other participating towns must work through our budget process to be reimbursed by the State. Both Woodfin and Fletcher will pay bills in full for their project and will seek reimbursement for the 80%. Thus, there will be no net cost to the City of Asheville as it will be treated as a "pass through" account. The 20% matching funds for those projects located in the Towns of Woodfin and Fletcher will be paid by those local governments.

The only cost to the City of Asheville to complete these three studies is $4,500 and that is already budgeted.

City staff requests City Council approve a budget amendment, in the amount of 58,000, to complete various transportation planning projects.

ORDINANCE BOOK NO. 19 – PAGE 110

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Vice-Mayor Cloninger moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

ITEM REMOVED FROM THE CONSENT AGENDA FOR DISCUSSION

MOTION APPROVING THE PUBLIC INVOLVEMENT PROCESS AND SCHEDULE FOR COMPLETING THE COMPREHENSIVE PLAN UPDATE

Planning & Development Director Scott Shuford said that this is the consideration of a motion approving the public involvement process and schedule for completing the 2010 Plan Update.

As part of the Planning & Development Department work program, staff is preparing to move forward on the public participation portion of the Comprehensive Plan update. Our proposal is to follow the same participation model that worked quite well with the I-26 Connector Project. Staff would assemble an advisory committee of 20-30 people that cover a broad spectrum of the community. This committee would have a couple of organizational and buy-in meetings at the start of the project, would monitor the process of public involvement, and would make final recommendations at the conclusion of the process.

Public involvement is planned as six area-specific forums at which staff will make an initial "here are some area issues and some ideas for addressing them" presentation and the public will have a significantly longer time at the meeting to respond and provide ideas in a facilitated setting. In effect, we would be combining an educational, visioning and innovations presentation with an opportunity for extensive input. This would be similar to a combination of the Education and Design Forums process used for the I-26 Connector project.

Using the area-specific approach would allow us to move forward with approval of elements of the plan if we ran into delays in some areas and not others. In other words, if there were no controversies with the Center City element but there were concerns in the South or East areas, we could approve the Center City element and work on the problem areas on a different schedule. There would also be one "Citywide Issues" forum after the area-specific forums to address larger scale issues like I-26. The forums would be facilitated by a professional meeting facilitator not associated with the City to insure the neutrality of the facilitation. We would also like to bring in an outside speaker on the importance of good urban design as a "kick-off" event for the participation process.

Preliminary timelines for this involvement process started on March 6, 2001, with City Council public hearing tentatively scheduled on September 25, 2001. This is an aggressive schedule that can be modified and/or lengthened depending on the need for additional public input.

Mr. Shuford said that at Council's March 6, 2001, worksession, Council asked him to forward to them the suggested makeup of the Asheville City Plan – 2025 Steering Committee. This group represents about the largest committee that could reasonably be accommodated using the participatory model proposed by staff. The committee t contains 45 members, making it roughly the same size as the Sustainable Economic Development Task Force.

The intent of staff is not to select the members representing the listed organizations, but let each board chair or executive officer designate who will represent his or her group. Staff would select the at-large members. The numbers in parentheses represent the number of representatives from a particular organization. If no numbers are shown, the group would receive one spot on the Steering Committee. The following is the make-up:

CITY TASK FORCES, COMMITTEES, BOARDS AND COMMISSIONS - Planning and Zoning Commission (3), Downtown Commission, Historic Resources Commission, Tree Commission, Greenway Commission, Parks and Recreation Board, Board of Adjustment, Sustainable Economic Development Task Force, and I-26 Community Coordinating Committee.

INSTITUTIONS/ GOVERNMENTAL - Asheville-Buncombe Technical Community College, University of North Carolina at Asheville, Mission-St. Joseph's Hospital, Land-of-Sky Regional Planning Council, and the N. C. Dept. of Transportation.

COMMUNITY ORGANIZATIONS - Coalition of Asheville Neighborhoods (3), RiverLink, Chamber of Commerce, Tourism Development Authority, Board of Realtors, Council of Independent

Business Owners, Quality Forward, Asheville-Buncombe Vision, Affordable Housing Coalition, Smart Growth Partners, Asheville Downtown Association, Western North Carolina Alliance, and Eagle-Market Street.

AT LARGE - General (5), Design Professionals (4), Private Sector Developers (3), and Non-Profit Developers (2).

Mr. Shuford noted that the City will also need to establish a consultative relationship with the following organizations in order to get their important ideas: Buncombe County (including the planning boards for Beaverdam and Limestone areas), Asheville City School Board, Buncombe County Board of Education, Metropolitan Planning Organization, Airport Authority, Water Authority, Metropolitan Sewerage District, Town of Woodfin and Town of Biltmore Forest.

City staff recommends City Council direct staff to initiate the public involvement process for the Comprehensive Plan update.

Councilman Peterson felt that the steering committee should have more members so there can be more elements of the community involved and a broader base of support. He felt that the committee proposed by staff is too organization focused and not geographically focused. He also objected to staff selecting the committee members. He explained that in the past when staff has selected a committee, those who were not selected felt excluded from the process and generated more opposition than necessary. In addition, he wondered if the schedule is too aggressive and questioned if something this large be done in that timeframe.

At the suggestion of Councilwoman Bellamy and after discussion, it was the consensus of Council to increase the number of general at-large members from 5 to 10, with Mayor Sitnick, Councilwoman Bellamy and Councilman Peterson working with Mr. Shuford to identify those members. Council members were urged to submit names and addresses to Mr. Shuford of individuals they suggest be involved in the steering committee.

Councilwoman Bellamy moved to approve the public involvement process and schedule for completing the Comprehensive Plan update as modified. This motion was seconded by Councilman Peterson and carried unanimously.

III. PUBLIC HEARINGS:

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. RESOLUTION NO. 01-25 - RESOLUTION APPOINTING MEMBERS TO THE ASHEVILLE SCHOOL BOARD

Vice-Mayor Cloninger said that on March 6, 2001, City Council interviewed Allison Jordan, Lewis Isaac, Barbara Blackburn, Adam Baylus, John Legerton, Mark Gordon, Richard Sandoval and T. Keith Thomson.

Each member of Council spoke high praise for all the candidates and felt that any one of them interviewed would make an excellent School Board member. There was a consensus amongst Council that there needs to be a better job in finding ways to communicate with the School Board.

Councilman Peterson nominated Allison Jordan, Mark Gordon and Richard Sandoval.

Councilwoman Bellamy nominated Allison Jordan, John Legerton and Mark Gordon.

Councilman Hay nominated Lewis Isaac, John Legerton and Mark Gordon.

Councilman Worley nominated Lewis Isaac, John Legerton and Mark Gordon.

Councilwoman Field nominated Lewis Isaac, John Legerton and Mark Gordon.

Vice-Mayor Cloninger nominated Lewis Isaac, John Legerton and Mark Gordon.

Mayor Sitnick nominated Adam Baylus, John Legerton and Mark Gordon.

After tallying the votes, Mark Gordon received 7 votes, John Legerton received 6 votes, Lewis Isaac received 4 votes, Allison Jordan received 2 votes, Adam Baylus received one vote, and Richard Sandoval received one vote.

Therefore, Councilman Worley moved to (1) reappoint John Legerton and Lewis Isaac as members of the Asheville School Board to each serve an additional four year term respectively, terms to expire April 1, 2005; and (2) appoint Mark Gordon to serve a four year term, term to begin on April 1, 2001, and expire April 1, 2005. All appointments are until their successors have been appointed. This motion was seconded by Councilman Hay and carried unanimously.

City Council instructed the City Manager to work with the School Board in developing a process whereby the Council and the School Board can meet jointly and develop goals City Council would like to see accomplished. It was also suggested that the City Council and the School Board meet on a quarterly basis. City Council asked the City Manager to report back to Council on how this goal setting process can be accomplished.

Mayor Sitnick said that two topics of discussion for the quarterly meetings could include appointed v. elected School Board and if the School Board should be increased from 5 to 7 members for additional representation in the community.

RESOLUTION BOOK NO. 26 – PAGE 287

B. RESOLUTION NO. 01-26 - RESOLUTION ENDORSING SELECTED SITE FOR PASSENGER RAIL STATION

Vice-Mayor Cloninger, Chair of the Passenger Rail Service Action Committee, said that last year the N. C. legislature asked the Rail Division of the N. C. Dept. of Transportation (NC DOT) to update a 1997 study on the feasibility of providing rail service to Western North Carolina. The Rail Division has been working on the report and plans to present it to the General Assembly in March, 2001. As part of the overall report, a separate Site Location Study was done for Asheville, the only city on the proposed route that had not determined a station site. The consulting firm of Gannett-Fleming was hired to conduct the study for the NC DOT Rail Division. On August 22, 2000, City Council created the Passenger Rail Service Action Committee to work with Gannett-Fleming and the NC DOT to evaluate several sites based on station service requirements and other specific evaluation criteria.

Economic Development Director Mac Williams then reviewed the station service requirements and the other specific evaluation criteria used. The then explained the advantages and disadvantages of each of the sites. As a result, the Passenger Rail Service Action Committee voted unanimously to locate the new station near Biltmore Village, on the site known as the Biltmore Station Shops, across the tracks from the former depot.

Discussion surrounded the estimated cost of the station being $2.7 million, with a 10% local match requirement, which can be met by a variety of sources, i.e. grants, public/private partnerships, etc.

On behalf of City Council, Mayor Sitnick thanked Vice-Mayor Cloninger and committee members Bradley Hix, Chris Cavanaugh, Stan Collins, Karen Cragnolin, Jim Coman, Linda Giltz, Judy Calvert, Mac Williams, Stacy Merten, Bruce Black, Ron Fuller, Cathy Ball, David Bender, Craig Newton and Travis Pollack.

Mr. Fred English was not supportive of passenger rail service coming to Asheville because of the cost and he felt there would not be enough riders.

Mr. David Gory felt that the concept of a private/public venture to run the rail station is a good idea but questioned where the $2.7 million would come from.

Ms. Hazel Fobes questioned ownership of the tracks, the station and the rail cars. She also wondered who would have the responsibility of repairing the tracks.

Mayor Sitnick felt this is one small thing City Council is pursuing in order to reduce air pollution in our community. She noted several other ways in which the City is working to eliminate pollution.

Mr. William Meredith noted that if the train is a diesel electric train, then it will be adding just as much pollution to the air as cars. He suggested alternative fuels.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it would not be read.

Councilman Worley moved to adopt Resolution No. 01-26. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 288

At 6:30 p.m., Councilwoman Bellamy moved to excuse Vice-Mayor Cloninger from the remainder of the meeting since he needs to be in Raleigh the next morning. This motion was seconded by Councilman Worley and carried unanimously.

C. RESOLUTIONS OF INTENT TO ANNEX LOWES AREA, UPPER SONDLEY AREA, BEST INNS, OLD DOMINION FREIGHT AREA AND ARDEN AREA AND SETTING PUBLIC INFORMATION MEETINGS ON MAY 3, 2001, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING CITY COUNCIL PUBLIC HEARINGS ON MAY 22, 2001, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Urban Planner II Paul Benson said that this is the consideration of resolutions stating the intent of the City to annex the following five areas: Lowes, Upper Sondley, Old Dominion, Best Inns and in the Arden area.

Starting with the report prepared in June 2000 by Benchmark Inc. City Planning staff have evaluated area surrounding the City of Asheville for annexation feasibility. Using geographic information system analysis the staff has narrowed the set of potentially qualifying areas to 5. Each of these areas meets one or more of the following criteria:

- Minimal water and sewer extension costs
- Clearly urbanized
- Location within urban growth area
- Eliminates inconsistency in corporate limits

The following summary information for each area will provide more detail on how the area meets these criteria, as well as other basic information about the area.

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Mr. Benson then reviewed with Council the following areas:

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Upper Sondley - This area consists of a high value single-family residential subdivision, located at the northern end of the Haw Creek valley in East Asheville. This is a developing area with good infrastructure already in place. Annexation would bring in this pocket of development located between the existing corporate limits and the Blue Ridge Parkway.

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Old Dominion – Another single property, with infrastructure in place, clearly urbanized with the current use of a major trucking terminal. This property forms a unique notch in the current corporate limits being bordered to the west, south and east by the city. This is also the only property served by the Sweeten Creek Industrial Park access road not in the city.

Arden - This is the largest of the proposed annexations, extending into the largest urban growth area adjacent to the city. This highly urbanized area is characterized by mixed land use, ranging from industrial to single-family residential. Infrastructure is generally good, but some relatively minor water and sewer upgrades would be needed. Clearly defined borders, and the connection of three existing satellite areas are additional benefits of this proposed annexation.

Under State law, the City must follow a specific process for annexation that begins with the adoption of resolutions that describe the boundaries of the areas under consideration, fix dates for a public informational meeting, and a public hearing on the question of annexation. State law also allows simultaneous annexation of multiple non-adjacent areas.

The following steps and dates meet the process required by State law:

Adoption of Resolutions of Intent	March 13, 2001
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Public Informational Meeting	May 3, 2001
Public Hearings	May 22, 2001
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Effective Date of Annexations	June 30, 2002

City staff recommends that City Council adopt the resolutions of intent for the following five areas: Lowes, Upper Sondley, Old Dominion, Best Inns, and Arden area.

Mr. Benson stated that the resolutions of intent state that (1) it is the intent of the City Council of the City of Asheville to consider annexation of the territory described in the resolution pursuant to Part 3 of Article 4A of Chapter 160A of the North Carolina General Statutes; (2) a public informational meeting on the question of annexing the above-described territory will be held in the Public Works Building located at 161 S. Charlotte Street, Asheville, N.C., at 5:30 p.m. on the 3rd day of May, 2001, at which time a representative of the City of Asheville shall make an explanation of plans for extending services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given the opportunity to ask questions and receive answers regarding the proposed annexation; (3) a public hearing on the question of annexing the above-described territory will be held in the Council Chamber located on the 2nd Floor of the City Hall Building, 70 Court Plaza, Asheville, N.C., at 5:00 p.m. on the 22nd day of May, 2001, at which time a representative of the City of Asheville will make an explanation of plans for extending Services to said territory and all residents and property owners in said territory and all residents of the City of Asheville will be given an opportunity to be heard; (4) a report of plans for extending services to the above-described territory shall be made available for public inspection at the office of the City Clerk at least thirty (30) days prior to the date of the public informational meeting; (5) the statement of financial impact contained in the report shall be delivered to the Buncombe County Board of Commissioners at least thirty (30) days prior to the date of the public informational meeting; (6) a legible map of the area to be annexed and a list of identified persons holding freehold interests in property in the area to be annexed shall be posted in the office of the City Clerk, Asheville City Building, 70 Court Plaza, Asheville, North Carolina, at least thirty (30) days prior to the date of the public informational meeting; (7) the effective date of annexation shall be at least one year, but no more than 400 days, from the date of passage of the annexation ordinance; and (8) notice of the public informational meeting and public hearing shall be given as required by law.

In response to a question from Councilman Hay, Mr. Benson said that four of the five areas are zoned by the City in their extraterritorial jurisdiction area and the fifth area (Arden area) is in the Limestone Township zoning.

Mr. Kevin Rollins felt that the City should not annex people unless they want to be annexed. He felt the people in the proposed annexation areas have no vote in whether they want to be annexed or not. In addition, he felt that Asheville has too many boards and commissions and it's not possible for any one person to attend all of them. He felt that people do not have a say in their government because the government is doing too much and it's out of control.

Councilman Peterson said that people who are being annexed do get to vote for their state representatives and their state senators who set the state annexation laws. If the people in Buncombe County disagree with the annexation law, then they can vote for new state representatives and state senators.

Mr. David Gory felt that City government should not be forcing regulatory control and higher taxation on people who do not request it.

Ms. Hazel Fobes questioned the notification process of people who are proposed to be annexed. Councilman Worley responded that every property owner proposed to be annexed will be notified by letter and there will be ample notice and ample opportunity for them to present their views.

Mayor Sitnick said that annexation, as authorized through state statute, is about equity. Equity for those people who exist in an urban setting. There are very specific rules on what can and can't be annexed as far as density and population. All of the people who live on the outskirts that are growing and becoming urbanized are using the city infrastructure to get to and from the urbanized places. That city infrastructure is being paid for solely by the Asheville taxpayer and it's being paid for for the benefit of everyone who uses it. That's why the state has a statute that authorizes cities to be able to annex areas that become urbanized because it becomes a tax equity issue.

Upon inquiry of Hazel Fobes, City Manager Westbrook said that most of the areas already have water and sewer lines installed.

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 01-27 - RESOLUTION OF INTENT TO ANNEX LOWES AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 3, 2001, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 22, 2001, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Peterson moved for the adoption of Resolution No. 01-27. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 289

RESOLUTION NO. 01-28 - RESOLUTION OF INTENT TO ANNEX UPPER SONDLEY AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 3, 2001, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 22, 2001, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Hay moved for the adoption of Resolution No. 01-28. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 293

RESOLUTION NO. 01-29 - RESOLUTION OF INTENT TO ANNEX BEST INNS, SETTING A PUBLIC INFORMATION MEETING ON MAY 3, 2001, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 22, 2001, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Worley moved for the adoption of Resolution No. 01-29. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 297

RESOLUTION NO. 01-30 - RESOLUTION OF INTENT TO ANNEX OLD DOMINION FREIGHT AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 3, 2001, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 22, 2001, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilwoman Field moved for the adoption of Resolution No. 01-30. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 301

RESOLUTION NO. 01-31 - RESOLUTION OF INTENT TO ANNEX IN THE ARDEN AREA, SETTING A PUBLIC INFORMATION MEETING ON MAY 3, 2001, IN THE PUBLIC WORKS BUILDING LOCATED AT 161 S. CHARLOTTE STREET, AT 5:30 P.M., AND SETTING A CITY COUNCIL PUBLIC HEARING ON MAY 22, 2001, IN THE COUNCIL CHAMBER, LOCATED ON THE 2ND FLOOR OF THE CITY HALL BUILDING AT 5:00 P.M.

Councilman Peterson moved for the adoption of Resolution No. 01-31. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 305

D. RESOLUTION NO. 01-32 - RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE UTILITY AGREEMENTS WITH THE N.C. DEPT. OF TRANSPORTATION FOR PISGAH HIGHWAY PHASE II, HENDERSONVILLE HIGHWAY, AND SWEETEN CREEK ROAD PHASE II, AND BRIDGE 512 ON OLD US 70

RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN INDEMNIFICATION AGREEMENT WITH THE REGIONAL WATER AUTHORITY

Water Resources Director Tom Frederick said that he will address City Council regarding the consideration of a resolution authorizing the Mayor to execute four Utility Agreements with the N. C. Dept. of Transportation (NC DOT) for Pisgah Highway Phase II, Hendersonville Highway, Sweeten Creek Road Phase II and Bridge 512 on Old US 70 Projects. He noted that City Attorney Oast will report to Council on the request from the Water Authority for an Indemnification Agreement.

Mr. Frederick said that there is law in North Carolina that our delegation is trying very hard to change, that requires municipalities over 5,000 in population to pay to relocate water lines in NC DOT right-of-way at the pleasure of NC DOT when roadway projects are being proposed. Because the Regional Water Authority in Asheville and Buncombe County is constituted under 160A of the General Statutes, the NC DOT treats the Authority as a municipality under the same rules that govern municipalities and requires that the Authority pays those non-betterment costs. There are four projects that are in the process right now, upon which the NC DOT is asking the City of Asheville to execute utility agreements for relocation of water lines. Three of those fall into the category of non-betterment relocation: (1) Pisgah Highway Phase II, Budget $628,600 in 329 Fund (2001 Revenue Bonds), Completion 2002; (3) Hendersonville Highway, Budget $235,180 in 329 Fund (2001 Revenue Bonds), Completion 2001; and (3) Sweeten Creek Road Phase II (south of I-40 to Rock Hill Road), Budget $1,245,770 in 335 Fund (Future Revenues, Proposed 2002 Revenue Bonds), Completion 2003. The fourth project (Bridge 512 on Old US 70 in Swannanoa, Budget $5,000 in 329 Fund (2001 Revenue Bonds), Completion 2002) is not a non-betterment relocation project. The NC DOT is paying all "non-betterment" costs for this project since the existing water line was outside NC DOT right-of-way before this project was proposed. The City will pay only for the cost of added valves on the relocated water main, necessary to conform to current Asheville Standard Specifications.

Staff recommends that the Mayor be authorized to execute Utility Agreements with NCDOT for Pisgah Highway Phase II, Hendersonville Highway, Sweeten Creek Road Phase II and Bridge 512 on Old US 70 Projects.

Mr. Frederick answered various questions from Councilman Peterson, some being, but are not limited to, how old the lines are, are any of the new lines larger than the ones that already exist, and would the lines need to be replaced if there was not NC DOT project.

Mr. Frederick said that there is approximately $2.1 Million required to be expended because of these four highway relocation projects. He pointed out that there are other NC DOT projects that are underway, which including these four, totally approximately $5 Million.

City Manager Westbrook said that our local delegation is working hard to get House Bill 43 passed which will exempt the Water Authority from paying those costs.

City Attorney Oast reported on the other issue regarding the consideration of a resolution authorizing the Mayor to enter into an Agreement for limited indemnification of the Regional Water Authority and its members in connection with NC DOT projects.

In connection with several projects for road improvements by NC DOT that have involved relocation of water lines, an issue has arisen involving the overlapping jurisdiction of the Authority and the City.

When the NC DOT performs projects that require the relocation of local water lines, the relocation work is performed by NC DOT's contractors. Typically NC DOT enters into Utility Agreements with the local government having jurisdiction over the lines. This Utility Agreement gives the local government some ability to review and approve the work done on its lines, and is the vehicle by which the NC DOT is reimbursed for the costs of the relocation, where reimbursement is required.

Locally, when NC DOT work involves relocation of water lines, an issue of overlapping jurisdiction arises because, pursuant to the Water Agreement, the Water Authority establishes policy for and administers the water system, but the lines belong to the City, and the easements and rights-of-way in which they lie are controlled by the City. Previously, when the NC DOT projects have involved our lines, the City has entered into the Utility Agreements with the State, and the Water Resources Director or his staff have reviewed and approved the contractor's work. Some projects have required corrective work to be performed, but these issues have been resolved and reimbursements made.

The reimbursement payments to NC DOT come from the Water Fund. For this reason, the Water Authority has requested that it be a party to the Utility Agreements, in order that it can participate meaningfully in decisions regarding the adequacy of work on its water lines, and the payment of money from its operating budget.

The issue created for the City by this request is that the reimbursement payments provided for in the Utility Agreements must be made, or the State can withhold the City's Powell

Bill funds (a substantial amount). Allowing the Water Authority to be a party to the Utility Agreements would create the potential for the Water Authority to jeopardize the City's Powell Bill allocation over an issue of technical compliance that may not cost much to correct, and this is unacceptable to the City.

The issue for the Water Authority is that, if the City approves substandard work by NC DOT, and that substandard work is later determined to be the cause of some water-system related damages (i.e., a ruptured line damaging adjacent property, or interrupting supply), the Water Authority and its members could be sued, and perhaps found liable.

Pursuant to the Water Agreement, the Water Authority is a body that can sue and be sued. Even though the situation that the Water Authority is concerned about is so far hypothetical, there is at least a theoretical liability exposure, and the Water Authority is requesting that it be protected in the unlikely event that a potential liability event should occur.

The agreement is my attempt, working with the Water Authority's attorney, to provide the requested protection, but limit it strictly to the situation where the exposure could occur, while not limiting the City's authority with respect to approval of water line relocation work. In summary, the only situation where the indemnity would be operative is where the Water Resources Director does not approve NC DOT's work and the Water Authority agrees (and does not waive the defect), but the City decides to overrule the objection. In that case, and only to the extent of the cost of correcting the disputed work, the reimbursement payment would be made directly by the City and the Water Authority could apply its money to fixing the problem. If City-approved defective work was identified as the cause of a problem, the indemnity would apply.

The agreement also provides that it may be terminated upon six months' notice by either party.

He said if Council agrees that the Water Authority's potential exposure should be addressed by providing a limited indemnity, then adoption of the resolution is recommended. However, he feels that if the situation were to develop that the Water Authority is concerned about, the City does have coverage through the Asheville Claims Corporation for the decisions made by public officials, to the same extent that City Council is covered for those same kinds of decisions. He didn't see where there is a need for this and recommended City Council not adopt the resolution.

City Attorney Oast said that if what the Water Authority is seeking is some kind of meaningful way to participate in the construction management process, he felt we could do that in some other way, other than this indemnification agreement. He said he would be glad to work with them and their attorney in an effort to try and do that and come back to City Council with a policy that implements that.

Councilman Worley moved to table the resolution authorizing the Mayor to enter into an Agreement for limited indemnification of the Regional Water Authority and its members in connection with NC DOT projects and that the City Attorney be directed to explore other alternatives and possibilities with the Water Authority and its attorney. This motion was seconded by Councilwoman Field and carried unanimously.

Ms. Hazel Fobes urged City Council to re-work the Water Agreement.

Mr. Peter Dawes felt that the Water Agreement is confusing and should be re-worked.

Mr. David Gory felt that not only should the Water Agreement be reviewed, but everything the City does, including every department, every person, every fee and every regulation.

210

Upon inquiry of Mr. William Meredith, Mr. Frederick updated City Council on the water levels at our reservoirs.

Councilman Peterson requested that our local delegation be sent a letter outlining the enormous amount of money the Water Authority is having to spend because of the NC DOT non-betterment relocation of water lines. In addition, the letter should thank them for working on our behalf to get House Bill 43 passed.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution authorizing the Mayor to sign the utility agreements with NC DOT and it would not be read.

Councilman Hay moved for the adoption of Resolution No. 01-32 authorizing the Mayor to execute Utility Agreements with NCDOT for Pisgah Highway Phase II, Hendersonville Highway, Sweeten Creek Road Phase II and Bridge 512 on Old US 70 Projects. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 309

J. RESOLUTION NO. 01-33 - RESOLUTION APPOINTING A MEMBER TO THE NOISE ORDINANCE APPEALS BOARD

Councilwoman Bellamy said that there are three vacancies (two regular members and one alternate member) on the Noise Ordinance Appeals Board. On February 27, 2001, City Council interviewed Mr. James T. Fink.

Councilman Worley moved to appoint Mr. James T. Fink to serve a two year term, term to begin immediately and expire on July 1, 2003, or until his successor has been appointed. This motion was seconded by Councilman Peterson and carried on a 5-1 vote, with Councilwoman Bellamy voting “no”.

RESOLUTION BOOK NO. 26 – PAGE 310

K. DISCUSSION OF CITY COUNCIL RULE NO. 7 REGARDING PUBLIC ADDRESS

Mayor said that as a result of the February 27, 2001, formal meeting regarding people who are representing a group that do not have a structure being allowed 10 minutes for comments, she has asked for a discussion regarding City Council Rule No. 7 regarding public comment be discussed. At that meeting, she asked the City Attorney to draft some possible additions to Council's Rules of Procedure. She suggested, however, that the Council not create an administrative boondoggle for 99% of the people who don't abuse the public comment process but that the Council consider all of the options available to them.

The proposed amendment to the Rules and Procedures regarding address by group spokespersons as drafted by City Attorney Oast reads: “Any group or organization wishing to address City Council pursuant to this rule shall cause a copy of its organizational documents to be filed with the City Clerk at or prior to the City Council meeting where the organization or group proposes to speak. This only needs to be done once as long as the group or organization exists. Three or more persons in attendance at a Council meeting may designate one individual to speak for them at that meeting, provided they identify themselves at the meeting and further provided that no other member of the represented group may speak on the same subject without leave of Council. Council may adopt different or special rules for particular agenda items or public hearings, and may extend the times provided herein to allow for completion of responses to

Council inquiries. Provided that the Council has adopted rules for quasi-judicial proceedings, this rule shall not apply to said proceedings. To the extent that this rule does apply to quasi-judicial proceedings, the Council may suspend or modify it as necessary to insure a fair proceeding and a complete record."

City Attorney Oast noted other items that City Council may wish to consider (1) limiting all speakers under "Informal Discussion and Public Comment" to three minutes; (2) requiring that persons wishing to address City Council during the public comment time sign up in advance of the meeting; or (3) Planning Director and City Attorney think that different rules would be appropriate for quasi-judicial proceedings, and the proposed amendment contemplates that.

Councilman Peterson understands the frustration, however, he didn't think Council should try to determine the issue of what is a legitimate group. He thinks that Council has reached that proper balance of providing a forum of any citizen who wishes to have input on issues concerning city government and running an effective meeting. He didn't think any major changes need to be made to the current rule. He did suggest that in Rule 7 (d), the sentence be amended to read "... under the "Informal Discussion and Public Comment" section of the agenda, any group or person wishing to address the council on any matter concerning city government not previously considered during the meeting may do so." (underline indicates addition) If the wording was added, it would then be left to the Mayor's discretion if it is a matter concerning city government. He felt City Council doesn't need to hear matters that they have no control over or hear matters that have already been decided.

Councilman Worley felt our existing rules cover the intent of public comment and that perhaps they have been abused a little. He suggested Rule 7 (d) (ii) be amended slightly as follows: "In lieu of the limitation set forth in (i) above, a group present at the meeting may elect to designate a spokesperson who may take no longer than ten minutes to compete a presentation. Other than the designated spokesperson, no member of the group may speak on the same subject without leave of Council." (underline indicates addition) In addition, he suggested adding a Rule 7 (d) (iii) to read as follows: "Council reserves the right, in its sole discretion, to (1) determine whether individuals present at a Council meeting constitute a group for purposes of this section; (2) extend the times for individuals or group spokespersons based upon the particular subject matter being discussed and/or Council inquires to the speaker; (3) shorten the time allotted to any speaker based upon the subject matter, the relevancy to Council matters and/or similarity to prior comments from other speakers."

Councilman Hay didn't think the rules needed to be amended much. He felt that by setting the rules Council has communicated to the people that these are the guidelines within which everyone operates. He felt Council might need to communicate more clearly what their expectations are about the people's use of the rules. He felt that everyone needs to be treated fairly and that the rules are being administered even-handedly. City Council respects the speakers and the rules reflect that respect. Council expects that respect in return.

Councilwoman Field said that there are a lot of other ways to communicate with City Council other than addressing them at the formal meetings, i.e., e-mail, faxes, letters, phone calls, meetings. These rules have been in effect for several years. She thinks that what has happened now is that since the meetings are televised, there are many people who would like to come and put their agendas forth to the public on television. She agreed with Councilman Peterson's suggestion that the topics need to be relevant to City Council because the Council meeting is a public forum to talk about public issues.

Mayor Sitnick said that since she has been Mayor, she has opened up government and made people feel welcome in the Council Chamber. She has allowed people more opportunities to speak, to express themselves, to meet with the Mayor and to be a part of their government. In addition, while our rules say if you are a spokesperson you have 10 minutes to speak, if you're an individual you have three minutes to speak, and if you are part of the group that is being represented by a spokesperson you cannot be heard separately. She has not limited that discussion at City Council meetings. When here has been a spokesperson and members of the group, she has allowed the 10 minutes and members of the group have spoken for three minutes. She will continue that procedure. She has decided that she will not permit the very small number of people who choose to abuse the rules to make her change the way she conducts the City's business in the Council Chamber. She believes in open government and allowing people to speak. With regard to groups, she said she will not restrict any group (even if they are short-term or formed for one particular issue) from speaking.

Ms. Sharon Martin thanked Council for not restricting public comment. Regarding speaking about city government issues only, she felt that there are some issues that are global that do affect us on a local level but don't look like that on the surface.

Mr. Fred English felt the public comments should be limited to city government issues only.

Mr. Dan Waterman, representative of NC Hemp, felt it was the right of citizens to come to City Council and present their concerns. He urged them to not reduce the channels they have to voice their concerns.

Mr. Dave Mittler, representing Asheville People for Cannabis Education, wanted to make sure that all group spokespersons would be treated fairly with regard to the 10 minute speaking limitation.

Mr. Mickey Mahaffee, representing Peacemakers, felt that the Mayor is extremely tolerant with regard to public comments and from personal experience know that City officers are accessible for open government.

Ms. April Spring asked that City Council be careful not to cut out all the voices if only a few are disrespectful.

Mr. William Meredith felt that any attempt to put a limitation on what people have to say is wrong. He felt that City Council must hear public comments, even if they are in disagreement or disrespectful, in order to make them better leaders.

Mr. Peter Dawes said that City government's public comment period is far more open than in County government.

Ms. Hazel Fobes agreed with Mr. Dawes about the restrictions in Buncombe County's board meetings regarding public comment.

It was the consensus of City Council to not amend Rule No. 7 regarding public comment.

VI. OTHER BUSINESS:

Report on the Status of the National Basketball Association Discussions

Councilman Hay updated City Council on negotiations concerning a National Basketball Association (NBA) league coming to the Asheville Civic Center. He said that City Council had reviewed four funding source options to renovate the Civic Center and, if Buncombe County's one-cent sales tax request is not adopted, has asked our local legislative delegation to introduce a bill to provide the City with authority for a one percent prepared food and beverage tax in the

City of Asheville. Since that time, cities became aware of the recent decision by the State to withhold certain tax reimbursements to state governments. Because the NBA needed to know something soon, City Council could not be confident that they would be able to identify a funding source to update the Civic Center.

Councilman Worley said that Arena Ventures is still interested in a possible future in Asheville and those talks may resume as we learn more about our funding situation in Raleigh.

Comments by David Gory

Mr. David Gory felt that the Civic Center should be sold.

Comments by Jason Cline

Mr. Jason Cline, representing the Community of Compassion and other responsible advocates of cannabis throughout Western North Carolina, stated that cannabis and the issues surrounding it are subjects that do need to be addressed. However, Mr. Dan Waterman and Mr. Dave Mittler are not representing the best interests of the people of Asheville nor representing cannabis in an appropriate and thoughtful way. He explained there will be an educational rally on March 1, 2001, and invited City Council to attend.

Comments by Mickey Mahaffee

Mr. Mickey Mahaffee stated that the two most vital elements to our lives are air and water and in our area they are in jeopardy. He urged City Council to re-work the Water Agreement.

Comments by Dan Waterman

Mr. Dan Waterman said that since revenue seems to be an issue, he suggested the City, through UNC-Asheville and the Multiple Disciplinary Organization for Psychedelic Studies in Charlotte, seek a protocol experimental hemp field on the Azalea Road property recently purchased by the City.

Comments by Dave Mittler

Mr. Dave Mittler said that regarding cannabis, false laws based on false information is a crime. Governments continue to refuse legal access to this beneficial plant for the many sick and dying in this world, they refuse production of food from the seed, and pollution free fuel.

Comments by Peter Dawes

Mr. Peter Dawes stated the importance of the City doing something about air pollution.

Comments by Kevin Rollins

Mr. Kevin Rollins felt City Council should reduce the number of laws, regulations and activities by City government at anyone time. Interested citizens cannot attend the many board and commission meetings because there are so many of them.

Claims

The following claims were received by the City of Asheville during the period of February 9 – March 1, 2001: Asis Khan (Water), Sheila Plemmons (Water), Janice Lowe (Inspections), Sycamore Partners (Water) and The Golden Horn (Water).

214

The following claims were received by the City during the period of March 2-8, 2001: BellSouth (Water), Rathburn Food Equipment (Streets), Michael Overstrom (Streets), Thomas Blair (Water), Lonnie Lepore (Streets), Martin Tschiffely (Sanitation) and Maria Fysal (Water).

These claims have been referred to Asheville Claims Corporation for investigation.

Lawsuit

The City received a Complaint on March 5, 2001, which is generally described as follows: Kathlyn Marie Stein and Michael Hootstein v. Asheville City Schools, et al. The nature of the proceeding is that the Defendant City is charged with failure to respond to and/or report the armed takeover of the Reid Center by three juveniles who displayed a weapon and plans to commit armed robbery and murder. Because of the number of defendants and the issues involved, the City Attorney" office will attempt to do some preliminary investigation in this matter prior to making a decision about representation.

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:23 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

215

Tuesday – March 20, 2001 - 3:00 p.m.

Worksession

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

CONSENT:

Amendment to Sale Contract on Disposal Parcel 6C

Summary: The consideration of a resolution authorizing the Mayor to execute a second amendment to the sale contract with Neighborhood Housing Services of Asheville Inc. for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project.

On May 7, 1997, the City entered into a sale contract with Neighborhood Housing Services of Asheville, Inc. (NHS) for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project for the amount of $248,900. That price was based on appraised values of $179,500 for Disposal Parcel 6B and $69,400 for Disposal Parcel 6C. The appraisals reflected a zoning classification of Commercial General on both parcels. On May 27, 1997, the Unified Development Ordinance was adopted and the zoning for Disposal Parcel 6C was changed to RM-8 Residential Multi-Family Medium Density District. NHS plans to construct affordable single family homes on the property.

On September 29, 1998, an amendment to the sale contract was executed to allow NHS to take title in two stages with one parcel being conveyed at each stage. Disposal Parcel 6B was conveyed on October 5, 1998, for the amount of $179,500. Disposal Parcel 6C has not yet closed but, with the completion of the improvements on 6B, NHS has begun to prepare for closing on Disposal Parcel 6C. On February 2, 2001, NHS submitted an appraisal dated January 26, 2001, by Christian B. Donochod based on the RM-8 zoning classification in the amount of $24, 500. NHS requested an amendment to the sale contract to adjust the price for Disposal Parcel 6C to the current appraised value. Community Development staff have obtained a review report of the Donochod appraisal by Mark L. Morris. The review by Mr. Morris incorporated an additional comparable sale and recommended a value for Disposal Parcel 6C of $28,000.

NHS has further requested adjustment of the terms of sale from cash at closing to scheduled payment of the purchase price as the single family homes are completed and sold.

It is the opinion of Community Development staff that adjustment of the contract price for Disposal Parcel 6C to $28,000 is appropriate considering the change in zoning and considering the intended use of the property for construction of affordable housing scheduled payment of the purchase price is also appropriate. The amendment will adjust the price and terms of sale and extend the date for deeding to September 1, 2001. This will enable NHS to complete the purchase and redevelop the property in accordance with the Redevelopment Plan.

216

Community Development staff recommends adoption of the resolution.

Property Donation on or near South Charlotte Street

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on and near South Charlotte Street from Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco without restriction.

The City of Asheville is interested in establishing greenways or greenway systems throughout the corporate limits of the City of Asheville. Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco have offered to donate property (approximately 0.11 acre) on and near South Charlotte Street (PIN Nos. 9649.19-50-6029, 8119 and 9649.19-60-0373) for the greenway system or any other purpose the City may choose without restriction.

The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the greenway system.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on and near South Charlotte Street from Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco.

Budget Amendment re: Public Art Board Fund

Summary: The consideration of a budget amendment, in the amount of $29,350, to transfer funds from the Parks and Recreation operating budget to a capital project for the development of gateways into the City of Asheville which will be completed in Fiscal Year 2001/02.

In 1999, City Council adopted an ordinance establishing the Public Art Board for the City of Asheville. Part of that ordinance established an annual appropriation for the Public Art Board which would be matched by other sources to complete specific projects in a fiscal year. Last year, $50,000 was appropriated with approximately $20,650 earmarked for projects in this year. The Parks and Recreation Department is requesting a budget amendment to transfer the remaining balance of funds ($29,350) to a capital project specifically for the development of gateways into the City of Asheville.

City staff recommends City Council approve a budget amendment in the amount of $29,350 to transfer funds from the Parks and Recreation operating budget to a capital project for the development of gateways.

Contract with Pinnacle Towers for Space at Spivey Mountain

Summary: The consideration of a resolution authorizing the City Manager to execute a antenna site lease agreement Pinnacle Towers, Inc. to house the antennae of the City's 800 MHz trunked radio system at the cost of $1,635.15 per month for the initial year of the agreement.

During July of 1992, the City of Asheville began using its new 800MHz trunked radio system. The antennae of the new system were installed on a tower at Spivey Mountain. This specific tower site was chosen for the implementation of the new radio system because of its ability to provide a very wide area of radio coverage from a single location. The site continues to provide satisfactory radio service coverage.

The City initially contracted with Motorola, Inc. for lease of the necessary space on that tower. However, On August 31, 1999, Pinnacle Towers, Inc. acquired the tower from Motorola, Inc. Upon notification to the City by Pinnacle Towers, Inc. that the term of the original agreement was about to expire, they provided the City with an antenna site lease agreement to be effective February 1, 2001. The terms of the agreement include an initial term of 60 months, with an increase in lease payments of 4% effective on each anniversary. The lease rate for the first year is $1,635.15 per month, whereas the rate of the expired agreement is $1,486.50 per month.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-5004 C44108 to cover the monthly cost of the new agreement.

The Finance Department requests City Council approve the City Manager to execute Antenna Site Lease No. 090425003N0015 with Pinnacle Towers, Inc. such that they will continue to provide space on their tower at Spivey Mountain to house the necessary antennae for the City's 800 MHz trunked radio communication system at the cost of $1,635.15 per month for the initial year.

Exemption of Survey Projects Less than $30,000 from General Statutes

Summary: The consideration of a resolution exempting surveying projects with an estimated professional fee less than $30,000 from the provisions of N. C. Gen. Stat. sec. 143-64.31.

In order to simplify and expedite the process for selection of surveyors for small surveying projects, the City has and desires to use a Multi-Party Agreement for Land Surveying Services (MPA). It is a simple, cost efficient method of handling many small projects under one umbrella. There is a Scope of Services that describes the work which may be assigned under the contract. The MPA does not guarantee any work will be assigned under the contract and, the participants only get paid if they actually perform work. Those who participate have been pre-qualified to perform the work set out in the Scope of Services. When any work of the type covered by the Scope of Services is needed a simple Request For Proposals is faxed to the participants and they fax back within 5 days or less a proposal for that particular project including fee and time. A proposal is selected from those received considering the difficulty of the work, the experience and qualifications of the participant, the time and the fee. In some cases only one firm may be asked for a fee and time proposal based on the requirements of the project.

The advantages of the Multi-Party Agreement are: (1) one contract can cover many projects; (2) selection from several participants; (3) it is more efficient and quicker; (4) it allows more qualified people the opportunity to participate; and (5) it is always open for a qualified person to sign on and participate.

Recently, concerns were expressed by several surveyors as to whether the MPA is in compliance with N. C. Gen. Stat. sec. 143-64.31. That statute requires cities to base selection of architects, engineers and surveyors on qualifications and not the lowest fee. N. C. Gen. Stat. sec. 143-64.31 provides that contracts where the fee is less than $30,000 may be exempted in writing by a local governmental unit. Consistent with the statute, a resolution from City Council exempting projects under $30,000 would be consistent with what other cities in North Carolina have done relative to small projects less than $30,000. The MPA has an upset figure of $25,000 so all projects covered by the MPA would qualify for the below $30,000 exemption.

Community Development staff recommends adoption of the resolution.

Mayor Sitnick asked that the record show that City Council has received this information and instructs the City Manager to place these items on the next formal City Council agenda.

REGIONAL WATER AUTHORITY

As a result of the City being served with a lawsuit earlier in the day from Henderson County regarding a provision in the water agreement, Councilman Worley moved to table discussion with their City representatives on the Regional Water Authority of Asheville, Buncombe and Henderson. This motion was seconded by Councilwoman Bellamy and carried unanimously.

RESOLUTION NO. 01-34 – RESOLUTION AUTHORIZING THE MAYOR TO APPLY FOR A GRANT FROM AND ENTER INTO AN AGREEMENT WITH THE N.C. DEPT. OF TRANSPORTATION TO FUND THE TRANSIT PLANNING PROGRAM

Ms. Cathy Ball, City Engineer, said that this is the consideration of a resolution authorizing the Mayor to execute a contract with the N. C. Dept. of Transportation (NC DOT) for the purpose of receiving funding for transit planning.

The Metropolitan Planning Organization (MPO) planning grant is a grant renewable annually to be used by the MPO for transit planning. This funding is in the amount of $33,140 of which the City is obligated to provide $3,314 (10%). The money will be used to partially fund the Transit Planner position in the Transportation Services Division of the Engineering Department and training of staff.

Given that the City of Asheville is the lead planning agency for the MPO, the City must approve this grant.

The match of $3,314 is currently budgeted in the Transportation Services Division Budget.

City staff requests that the Mayor be authorized to execute a contract with the NC DOT for the purpose of receiving funding for transit planning and that formal action be taken on this matter at the March 20, 2001, worksession because the contract is due on March 23, 2001.

Councilwoman Field moved to suspend the rules and take formal action at this meeting. This motion was seconded by Councilman Worley and carried unanimously.

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolution and it will not be read.

Councilwoman Field moved to adopt Resolution No. 01-34. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 311

EXTRATERRITORIAL JURISDICTION EXTENSION

Planning & Development Director Scott Shuford said that this is the consideration of a motion authorizing staff to pursue extension of the City's extraterritorial jurisdiction (ETJ) in the following three areas: the Fairview gateway area, the Long Shoals Road gateway area, and an area around Sardis Road having industrial potential.

City Council received a report on ETJ boundary extension at its January retreat. Since that time, City staff has developed a refined ETJ expansion area for your consideration that includes only the areas we consider to be of the highest priority for protection under City development regulations. These areas include: the Fairview gateway area, the Long Shoals Road gateway area, and an area around Sardis Road having industrial potential.

Staff is proposing the following schedule:

- **April 6** - Property owner notification (approximately 2,500 letters will be mailed out)
- **April 10** - City Council sets public hearing date of May 8 for ETJ expansion
- **May 8** - Public hearing and Council action expanding the ETJ
- **June 6** - Planning and Zoning Commission public hearing on zoning for ETJ areas
- **June 12** - City Council sets public hearing date of June 26 for zoning for ETJ areas
- **June 26** - City Council holds public hearing on zoning for ETJ areas

Please note that these hearings only involve the extension of ETJ boundaries and not the services provided within the boundaries. We will bring forward the services component of this issue early in your budget discussions.

Discussion surrounded the Buncombe County's upcoming public hearing on March 27 regarding their zoning one mile out from the City's corporate limits. If that happens, the City will not be able to incorporate those areas into the ETJ, however, they can be annexed in the future.

Council also discussed the need for the City and County to work together to preserve the land and development standards that the entire community cares about.

Councilman Peterson suggested City staff hold community meetings in the three areas proposed for the ETJ extension.

It was the consensus of City Council to have City staff proceed with the above schedule for extending the City ETJ.

LITTER CONTROL ALTERNATIVES

Public Works Director Mark Combs said that staff seeks Council direction regarding proposed alternative methods of addressing the litter issue.

City Council has directed staff to develop alternatives for Council consideration that will more effectively address the City-wide litter problem. Staff has already suggested a partnership with the N. C. Dept. of Transportation (NCDOT) regarding street sweeping enhancements. The existing Sanitation Division program of addressing litter on private properties and in the public right-of-way appears to be effective at addressing of those specific types of litter and no enhancements are recommended.

Consequently, this report primarily deals with a specific kind of litter - so called "snipe" signs that are attached to trees, telephone poles, benches and other street furniture, walls, buildings, etc. Research by the City Attorney's office indicates that N. C. Gen. Stat. sec. 160A–303.1 provides cities with broad authority to address litter issues. Given this authority, there are two methods of more effectively addressing snipe sign litter in Asheville:

- The ***enforcement approach*** in which the previously mentioned statute would be used to develop local regulations that would define snipe sign as litter and provide for civil penalties for those responsible for such litter.
- The ***removal approach*** in which the snipe signs would be quickly removed from public places, thereby discouraging such signs.

220

Each approach has its advantages. The enforcement approach would allow us to issue a ticket for each snipe sign violation; the maximum civil penalty in this case is $50 per occurrence (i.e., up to $50 for each sign). Notice is not required, although staff will attempt to issue warning notices before issuing citations whenever practical. The enforcement approach could therefore result in a revenue stream that could be used to offset the personnel and operational costs of the program.

The removal approach is more direct. It simply involves assigning an employee to remove snipe signs as his/her primary function. If snipe signs are promptly removed, their effectiveness in reaching potential customers is greatly reduced. Removal under the enforcement option above could still occur but would not be the primary focus of the program.

The third alternative would be to combine both the enforcement and removal approaches. This would be the most effective method of addressing the issue, but also the most costly.

Staff also recommends making special educational efforts that would be directed toward businesses which seem to utilize this form of advertising (e.g., bars and nightclubs, etc.). Additionally, this educational effort could be used to promote the increased use of the signage kiosks which are placed Downtown.

In terms of costs, the following information is provided:

- For the enforcement approach, a Zoning Enforcement Officer would be the most appropriate staff position to handle this program. Existing staff capacity in Code Enforcement Division of the Planning and Development Department does not allow the assumption of any additional workload; consequently, an added Zoning Enforcement Officer position would be needed at a cost of approximately $38,000 including benefits. This employee would also need office space (there is sufficient space currently available), a personal computer ($2250) and a vehicle (a small pick up truck would cost approximately $15,000).
- The removal approach would involve the hire of a new Laborer position in the Sanitation Division of the Public Works Department. Wage and benefit cost for this employee would be about $23,000 including benefits. No computer or office space would be needed, but a vehicle would be required ($15,000).
- As noted above, it is possible to combine these approaches at additional cost; unquestionably, this would be the most effective (as well as the most costly) method of addressing snipe sign litter.

A final enhancement item to either of the above approaches would be to contract with a local non-profit or non-profits to assist in the removal of snipe signs. For example, it might be possible to agree upon a "bounty" of $.50 a sign and reimburse the non-profit at that rate. It is unlikely that this method would have the same level of effectiveness as the staff-based options listed above simply due to the amount of time the non-profit may be able to spend on the effort.

Any of the above methods of addressing the snipe sign litter problem would be more effective than our current largely complaint-based program. Having specific staff available to address the issue as their primary work duty would drastically enhance our current efforts. However, any of these approaches will result in budgetary impact as there is no available staff capacity to assume this program without additional personnel and other resources. If Council's intent is to create a regulatory program that would result in consequences for the violators, we would recommend that you take the enforcement approach. If your concern is to simply enhance current removal efforts, the removal approach would be a better fit and cost less money.

Mr. Combs noted that the City is currently working with Buncombe County, the NCDOT and Quality Forward on a spring clean-up program.

Mayor Sitnick explained that the City is currently working on neighborhood kiosks which will alleviate some of the lost dogs, bake sale and yard sale signs.

Mr. Combs said that the kiosks program in downtown is great, however, maintenance of those kiosks is very important.

All of Council felt that the public needs to be educated about what the law is with regard to signs and keeping your property clean.

Upon inquiry of Councilman Hay, City Attorney Oast said that they are in the process of drafting an ordinance regarding chronic offenders.

Vice-Mayor Cloninger explained why he felt the City should concentrate on the removal approach.

Mayor Sitnick stressed that until the City starts getting serious about people keeping property clean, we will not get ahead of the game. She supported education through the government channel, City's webpage and press releases. She urged all of Council to keep litter as a focus point when speaking to various groups. She was highly in favor of the neighborhood kiosks program. She also suggested City staff meet with Carolina Power & Light Company and BellSouth to see if, and how, they would like to participate in the sign removal/enforcement and education efforts since their workers have the potential of being injured when climbing utility poles.

City Manager Westbrook said that efforts were made to reach an agreement with NCDOT to address litter issues on state roads. However, after discussions, they stated they are not able to participate at the current time due to current budget concerns.

Council then discussed the enforcement approach and if there would be a distinction between commercial and neighborhood signs. City Attorney Oast recommended against that distinction.

When Councilwoman Field asked if there would be any free speech issues concerning the removal of signs, City Attorney Oast said that the City has the right to regulate the use of signs in our rights-of-way.

Upon inquiry of Councilwoman Bellamy, City Manager Westbrook said that the $15,000 for the small pick-up truck would have to come out of contingency.

Mayor Sitnick stressed that there is no good solution to this problem, except that people be respectful and not litter.

Councilwoman Field suggested a more aggressive clean-up program for companies that have larger parking lots, like the malls, strip malls, Wal-Mart and K-Mart.

It was the consensus of City Council to have City staff meet with CP&L Bellsouth, and other organizations to put together an effort do so something with regard to sign and litter removal on a broader base. If the NC DOT realizes that the City has other organizations willing to help with this issue, then they may be willing to do something on a smaller basis.

MISCELLANEOUS MATTERS

Vice-Mayor Cloninger reported on his recent trip to Raleigh, N.C., regarding the passenger rail service to Asheville. He stated that the overall reception was very good.

Upon inquiry of Councilman Peterson, it was the consensus of City Council to not reschedule their Tuesday, April 24, 2001, formal meeting to another date. The suggestion was made because there is a N.C. League of Municipalities Regional Meeting in Waynesville, N.C., on that same date. City Manager Westbrook said that he would have City staff attend the meeting.

Upon inquiry of Vice-Mayor Cloninger, City Attorney Oast updated City Council on the legislative package City Council submitted to their local delegation. It was the consensus of City Council to instruct the City Attorney to investigate, and report back, what the process would be, and costs involved, to have an item added to the November ballot regarding a tax on prepared meals and beverages to be used for the renovation of the Civic Center. In addition, City Attorney Oast was instructed to provide our local delegation with enough background information on our legislative requests to justify Council's request for them to introduce a bill and enable them to answer questions that may come up. City Manager Westbrook said that next year, as part of the legislative package discussion, he will set up a date for Council to visit their local delegation in Raleigh to discuss their requests and leave information for them.

CLOSED SESSION

At 4:46 p.m., Councilman Hay moved to go into closed session (1) to discuss matters relating to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations – the statutory authority is contained in G.S. 143-318.11(a)(4); (2) to establish or to instruct the City's staff or negotiating agents concerning the position to be taken by or on behalf of the City in negotiating the terms of a contract for the acquisition of real property by purchase, option, exchange or lease - the statutory authorization is contained in G.S. 143-318.11(a)(5); and (3) to consult with an attorney employed by the City about matters with respect to which the attorney-client privilege between the City and its attorney must be preserved, including lawsuits involving the following parties: Henderson County, Cane Creek Water and Sewer District. Asheville-Buncombe-Henderson Water Authority, Buncombe County, and City of Asheville - the statutory authorization is contained in G.S. 143-318.11(a)(3). This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

At 5:40 p.m., Councilman Peterson moved to come out of closed session. This motion was seconded by Councilwoman Field and carried unanimously.

ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 5:40 p.m.

Magdalen Burleson
CITY CLERK

Leni Sitnick
MAYOR

Tuesday – March 27, 2001 - 5:00 p.m.

Regular Meeting

Present: Mayor Leni Sitnick, Presiding; Vice-Mayor M. Charles Cloninger; Councilwoman Terry Bellamy; Councilwoman Barbara Field; Councilman Edward C. Hay Jr.; Councilman Brian L. Peterson; and Councilman Charles R. Worley; City Attorney Robert W. Oast Jr.; City Manager James L. Westbrook Jr.; and City Clerk Magdalen Burleson

Absent: None

INVOCATION

Mayor Sitnick gave the invocation.

I. PROCLAMATIONS:

Mayor Sitnick welcomed Boy Scout Troop 72 from South Asheville.

A. PROCLAMATION PROCLAIMING APRIL 2001 AS "CHILD ABUSE PREVENTION MONTH"

Mayor Sitnick read the proclamation proclaiming the month of April, 2001, as "Child Abuse Prevention Month" in the City of Asheville. She presented the proclamation to Mr. Derrick Evans, who briefed City Council on some activities taking place during the month.

B. PROCLAMATION PROCLAIMING THE MONTH OF APRIL, 2001, AS "PARKINSON'S DISEASE AWARENESS MONTH"

Mayor Sitnick read the proclamation proclaiming the month of April, 2001, as "Parkinson's Disease Awareness Month," in the City of Asheville. She presented the proclamation to Ms. Jane Bingham who briefed City Council on some activities taking place during the month.

II. CONSENT:

A. APPROVAL OF THE MINUTES OF THE REGULAR MEETING HELD ON MARCH 13, 2001, AND THE WORKSESSION HELD ON MARCH 20, 2001

B. MOTION SETTING A PUBLIC HEARING ON APRIL 10, 2001, TO CONSIDER THE INITIAL ZONING OF THE AREA KNOWN AS OAKBROOK, PHASE 2, OF BILTMORE PARK LOCATED AT WHITE ASHE DRIVE TO RS-8 RESIDENTIAL SINGLE-FAMILY HIGH DENSITY DISTRICT

C. MOTION SETTING A PUBLIC HEARING ON APRIL 10, 2001, TO CONSIDER THE INITIAL ZONING OF THE AREA KNOWN AS BURNSIDE, PHASE 4, OF BILTMORE PARK LOCATED AT WHITE ASHE DRIVE TO RS-4 RESIDENTIAL SINGLE-FAMILY MEDIUM DENSITY DISTRICT

D. RESOLUTION NO. 01-35 - RESOLUTION AMENDING THE SALE CONTRACT ON DISPOSAL PARCEL 6C OF THE HEAD OF MONTFORD PROJECT FOR NEIGHBORHOOD HOUSING SERVICES OF ASHEVILLE

Summary: The consideration of a resolution authorizing the Mayor to execute a second amendment to the sale contract with Neighborhood Housing

Services of Asheville Inc. for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project.

On May 7, 1997, the City entered into a sale contract with Neighborhood Housing Services of Asheville, Inc. (NHS) for Disposal Parcels 6B & 6C of the Head of Montford Redevelopment Project for the amount of $248,900. That price was based on appraised values of $179,500 for Disposal Parcel 6B and $69,400 for Disposal Parcel 6C. The appraisals reflected a zoning classification of Commercial General on both parcels. On May 27, 1997, the Unified Development Ordinance was adopted and the zoning for Disposal Parcel 6C was changed to RM-8 Residential Multi-Family Medium Density District. NHS plans to construct affordable single family homes on the property.

On September 29, 1998, an amendment to the sale contract was executed to allow NHS to take title in two stages with one parcel being conveyed at each stage. Disposal Parcel 6B was conveyed on October 5, 1998, for the amount of $179,500. Disposal Parcel 6C has not yet closed but, with the completion of the improvements on 6B, NHS has begun to prepare for closing on Disposal Parcel 6C. On February 2, 2001, NHS submitted an appraisal dated January 26, 2001, by Christian B. Donochod based on the RM-8 zoning classification in the amount of $24, 500. NHS requested an amendment to the sale contract to adjust the price for Disposal Parcel 6C to the current appraised value. Community Development staff have obtained a review report of the Donochod appraisal by Mark L. Morris. The review by Mr. Morris incorporated an additional comparable sale and recommended a value for Disposal Parcel 6C of $28,000.

NHS has further requested adjustment of the terms of sale from cash at closing to scheduled payment of the purchase price as the single family homes are completed and sold.

It is the opinion of Community Development staff that adjustment of the contract price for Disposal Parcel 6C to $28,000 is appropriate considering the change in zoning and considering the intended use of the property for construction of affordable housing scheduled payment of the purchase price is also appropriate. The amendment will adjust the price and terms of sale and extend the date for deeding to September 1, 2001. This will enable NHS to complete the purchase and redevelop the property in accordance with the Redevelopment Plan.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 312

E. RESOLUTION NO. 01-36 - RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT DONATION AND CONVEYANCE OF REAL PROPERTY ON AND NEAR SOUTH CHARLOTTE STREET FROM MR. AND MRS. SIDNEY M. SHOCHET AND DR. AND MRS. IRWIN PLISCO

Summary: The consideration of a resolution authorizing the Mayor to accept a donation of real property on and near South Charlotte Street from Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco without restriction.

The City of Asheville is interested in establishing greenways or greenway systems throughout the corporate limits of the City of Asheville. Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco have offered to donate property (approximately 0.11 acre) on and near

South Charlotte Street (PIN Nos. 9649.19-50-6029, 8119 and 9649.19-60-0373) for the greenway system or any other purpose the City may choose without restriction.

The Parks and Recreation staff have reviewed the proposed donation and found that the property is appropriate for the greenway system.

City staff recommends City Council adopt the resolution authorizing the Mayor to accept a donation of real property on and near South Charlotte Street from Mr. and Mrs. Sidney M. Shochet and Dr. and Mrs. Irwin Plisco.

RESOLUTION BOOK NO. 26 – PAGE 313

F. ORDINANCE NO. 2796 - BUDGET AMENDMENT REGARDING THE PUBLIC ART BOARD FUND

Summary: The consideration of a budget amendment, in the amount of $29,350, to transfer funds from the Parks and Recreation operating budget to a capital project for the development of gateways into the City of Asheville which will be completed in Fiscal Year 2001/02.

In 1999, City Council adopted an ordinance establishing the Public Art Board for the City of Asheville. Part of that ordinance established an annual appropriation for the Public Art Board which would be matched by other sources to complete specific projects in a fiscal year. Last year, $50,000 was appropriated with approximately $20,650 earmarked for projects in this year. The Parks and Recreation Department is requesting a budget amendment to transfer the remaining balance of funds ($29,350) to a capital project specifically for the development of gateways into the City of Asheville.

City staff recommends City Council approve a budget amendment in the amount of $29,350 to transfer funds from the Parks and Recreation operating budget to a capital project for the development of gateways.

ORDINANCE BOOK NO. 19 – PAGE 112

G. RESOLUTION NO. 01-37 - RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN ANTENNA SITE LEASE AGREEMENT WITH PINNACLE TOWERS INC.

Summary: The consideration of a resolution authorizing the City Manager to execute a antenna site lease agreement Pinnacle Towers, Inc. to house the antennae of the City's 800 MHz trunked radio system at the cost of $1,635.15 per month for the initial year of the agreement.

During July of 1992, the City of Asheville began using its new 800MHz trunked radio system. The antennae of the new system were installed on a tower at Spivey Mountain. This specific tower site was chosen for the implementation of the new radio system because of its ability to provide a very wide area of radio coverage from a single location. The site continues to provide satisfactory radio service coverage.

The City initially contracted with Motorola, Inc. for lease of the necessary space on that tower. However, On August 31, 1999, Pinnacle Towers, Inc. acquired the tower from Motorola, Inc. Upon notification to the City by Pinnacle Towers, Inc. that the term of the original agreement was about to expire, they provided the City with an antenna site lease agreement to be effective February 1, 2001. The terms of the agreement include an initial term of 60 months, with an increase in lease payments of 4% effective on each anniversary. The lease rate for the first year is $1,635.15 per month, whereas the rate of the expired agreement is $1,486.50 per month.

Funds have been appropriated in the Finance Department, Information Services Division, in Account No. 110-1005-415-5004 C44108 to cover the monthly cost of the new agreement.

The Finance Department requests City Council approve the City Manager to execute Antenna Site Lease No. 090425003N0015 with Pinnacle Towers, Inc. such that they will continue to provide space on their tower at Spivey Mountain to house the necessary antennae for the City's 800 MHz trunked radio communication system at the cost of $1,635.15 per month for the initial year.

RESOLUTION BOOK NO. 19 – PAGE 314

H. RESOLUTION NO. 01-38 - RESOLUTION EXEMPTING SURVEYING PROJECTS WITH AN ESTIMATED PROFESSIONAL FEE LESS THAN $30,000 FROM THE PROVISIONS OF N. C. GEN. STAT. SEC. 143-64.31

Summary: The consideration of a resolution exempting surveying projects with an estimated professional fee less than $30,000 from the provisions of N. C. Gen. Stat. sec. 143-64.31.

In order to simplify and expedite the process for selection of surveyors for small surveying projects, the City has and desires to use a Multi-Party Agreement for Land Surveying Services (MPA). It is a simple, cost efficient method of handling many small projects under one umbrella. There is a Scope of Services that describes the work which may be assigned under the contract. The MPA does not guarantee any work will be assigned under the contract and, the participants only get paid if they actually perform work. Those who participate have been pre-qualified to perform the work set out in the Scope of Services. When any work of the type covered by the Scope of Services is needed a simple Request For Proposals is faxed to the participants and they fax back within 5 days or less a proposal for that particular project including fee and time. A proposal is selected from those received considering the difficulty of the work, the experience and qualifications of the participant, the time and the fee. In some cases only one firm may be asked for a fee and time proposal based on the requirements of the project.

The advantages of the Multi-Party Agreement are: (1) one contract can cover many projects; (2) selection from several participants; (3) it is more efficient and quicker; (4) it allows more qualified people the opportunity to participate; and (5) it is always open for a qualified person to sign on and participate.

Recently, concerns were expressed by several surveyors as to whether the MPA is in compliance with N. C. Gen. Stat. sec. 143-64.31. That statute requires cities to base selection of architects, engineers and surveyors on qualifications and not the lowest fee. N. C. Gen. Stat. sec. 143-64.31 provides that contracts where the fee is less than $30,000 may be exempted in writing by a local governmental unit. Consistent with the statute, a resolution from City Council exempting projects under $30,000 would be consistent with what other cities in North Carolina have done relative to small projects less than $30,000. The MPA has an upset figure of $25,000 so all projects covered by the MPA would qualify for the below $30,000 exemption.

Community Development staff recommends adoption of the resolution.

RESOLUTION BOOK NO. 26 – PAGE 315

Mayor Sitnick said that members of Council have been previously furnished with a copy of the resolutions and ordinances and the Consent Agenda and they would not be read.

Councilman Hay moved for the adoption of the Consent Agenda. This motion was seconded by Councilman Worley and carried unanimously.

III. PUBLIC HEARINGS:

A. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT THE CORNER OF CHARLOTTE STREET AND EDWIN PLACE

Planning & Development Director Scott Shuford said that the Planning & Zoning Commission ("Commission") is interested in seeing these kinds of ancillary types of uses come to them as a recommendation type of role in the same manner in which they would consider Level III projects. This was discussed at the last Commission meeting. If Council chooses, they can refer this to the Commission for a recommendation. It does not require a public hearing and the review of it would be in the form of a recommendation only to City Council. If that was pursued, the Commission could review that at their April 4, 2001, meeting and then it could come back to City Council for public hearing on April 10, 2001, for consideration.

Vice-Mayor Cloninger asked about what kind of opportunity would there be for public input at the Commission meeting. Mr. Shuford said that while the issue before the Commission would not be a public hearing, they would set it up as an informational meeting in which there would be public input.

Councilman Peterson said that there has already been meetings between the developer and neighborhood groups. Generally when items are remanded to the Commission, compromises can be made, however, it looks like that approach has already been tried. Therefore, given the number of people that are in the audience to address this issue and since extension discussions have already occurred, he felt it would be too much to ask the audience to go to the Commission meeting next week and then back to the City Council meeting again in two weeks. He felt City Council should continue with the public hearing now.

Councilman Hay said that in all conditional use permit issues, there is no opportunity for changes and recommendations to be made prior to coming before City Council. He felt that there is room in this proposal to address at least some of the concerns expressed to him via e-mail and letters. There is an inherent flaw in the conditional use process because it is not allowing City Council to get the best product in front of them. Sending this to the Commission will allow them to address each of the concerns and report back to Council with more focus and perhaps a list of possible outcomes that will give Council something to work from. He wants to make the best decision he can and he thinks sending this to the Commission will help in that decision-making process.

Upon inquiry of Mayor Sitnick, City Attorney Oast said that City Council can refer this matter to the Commission at anytime, even if Council chooses to hear public comment tonight. However, if public comment is taken, the hearing should be continued because the public should have an opportunity to address the Commission's recommendations when the issue comes back to Council. He also noted that the public comment, after it comes back to Council, can be limited to specific items addressed by the Commission.

Vice-Mayor Cloninger said that if Council remands this to the Commission, then City Council should withhold public comment at this meeting. He too felt this matter should be sent to the Commission for a recommendation. He was sensitive, as was all of Council, that a large crowd was present at the meeting, however, he felt that if consensus could be developed, Council should support that process.

Mayor Sitnick supported holding the public hearing now. She said that if the issue is ultimately sent to the Commission asking them to review a specific item, then Council can take additional public comment on the scope of what was referred to the Commission when it comes back to City Council.

Upon inquiry of Councilwoman Field, Mr. Shuford said by sending this to the Commission, it does lay issues out on the table in a way that gets Council more information prior to the public hearing that Council does not normally receive in a conditional use permit process. In addition, City Council would have the draft minutes of the Commission meeting, as well as anything staff would prepare and summarize as a result of that meeting.

Councilwoman Field felt that any additional factual information City Council can obtain will help her make a more informed decision. She supported sending this to the Commission for their recommendation.

Councilwoman Bellamy said it was difficult for her to make a good decision based on the limited information City Council has before it now. She felt it was imperative that Council receive information on the traffic since that seems to be one of the biggest concerns.

Mr. Michael Moule, City Traffic Engineer, said that this isn't a project that would trigger a full traffic impact analysis given the level of traffic that is potentially generated by the proposal. He would provide Council with a rough estimate of the amount of traffic that would be generated by that development based on what is in there. Not all of that would be using the parking lot because there is also some on-street parking that is available for that site. That is all the information that could be developed given the size of this project.

Vice-Mayor Cloninger moved to (1) send this matter to the Planning & Zoning Commission for them to review and solicit public input at their April 4, 2001, meeting and make a recommendation to City Council; and (2) to continue this public hearing until April 10, 2001. This motion was seconded by Councilman Hay.

Upon inquiry of Councilman Peterson, City Attorney Oast said that the Planning & Zoning Commission is not bound by the same quasi-judicial process as is City Council and their kind of information gathering is broader. He did recommend, however, that City Council not attend the Planning & Zoning Commission meeting.

Mr. Roger James, spokesperson for the neighborhood, felt that there needs to clarification on the process for a quasi-judicial hearing for both the residents and City Council. The residents are uncertain on how to adhere to the process.

Mayor Sitnick stated that we will be putting information on the Government Channel regarding the City's conditional use process.

Mr. Clay Mooney, landscape architect representing the developer on this project, said that if Council sends this to the Planning & Zoning Commission, they would prefer not to hold the public hearing tonight. They would like to address all the issues after the Commission makes their recommendation.

Councilman Peterson offered an amendment to the motion to send to the Planning & Zoning Commission the other item before City Council at this meeting regarding the issuance of a conditional use permit for a parking lot in a residential district at 2 Grandview Place. He felt that if Council wants to be consistent, then they should treat similar proposals alike.

City Attorney Oast said that since two separate public hearings have been advertised, he would recommend that City Council vote on the original motion first and if Councilman Peterson wishes to make another motion regarding the conditional use permit for 2 Grandview Place, then that would be appropriate.

With regard to the amendment to the motion, Councilman Peterson said that he would yield to the City Attorney's recommendation and withdraw his amendment.

The motion made by Vice-Mayor Cloninger and seconded by Councilman Hay carried on a 4-3 vote, with Vice-Mayor Cloninger, Councilwoman Bellamy, Councilwoman Field and Councilman Hay voting "yes" and Mayor Sitnick, Councilman Peterson and Councilman Worley voting "no".

B. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR ANCILLARY USE (PARKING LOT) IN A RESIDENTIAL DISTRICT AT 2 GRANDVIEW PLACE

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 6:06 p.m.

Chief Planner Gerald Green submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), and City Exhibit 3 (Staff Report). This public hearing was advertised on March 16 and 23, 2001.

Mr. Green then said that this is the consideration of a motion to issue a conditional use permit for a parking lot to be located on property zoned RS-8 Residential Single Family High Density District at 2 Grandview Place off Tunnel Road.

The Technical Review Committee (TRC) reviewed this project for compliance with the technical requirements of the Unified Development Ordinance (UDO) and took action to approve with conditions. The project site is located behind the commercial strip along Tunnel Road, between the commercial uses and the residential development on Grandview Place. The parking lot would be associated with an adjacent restaurant (East Village Grill). The property size is approximately 0.30 acre. The site meets all the location requirements for ancillary uses in residential districts. The parking lot was constructed in violation of the regulations and standards of the City of Asheville. The owner is seeking a conditional use permit to correct the violation. A home and garage that were located on the property have been removed, as has some vegetation. The parking lot will provide 17 parking spaces for customers of the adjacent restaurant. A number of trees will be planted to serve as street trees and buffer trees for the parking area. More than 10,000 square feet of the site has been graded for the construction of the parking area. Measures will be taken to minimize stormwater impact onto adjacent property.

The site location serves as the point of transition, and buffer, from the commercial strip along Tunnel Road to the residential uses on Grandview Place. Single family residential development on this lot would be heavily impacted by the commercial uses on Tunnel Road. Construction of the parking lot in accordance with the site plans submitted will eliminate the parking problems and truck access problems experienced by the restaurant that will use the parking lot. Under this proposal, and as stipulated by the ancillary use standards, the zoning of the property will not change from its current RS-8 designation. Until such time as residential or other appropriate development of the lot is proposed, it is appropriate to allow this small parking lot. The site plan submitted and the conditions identified by City staff assure that the impacts of the development on the surrounding uses are mitigated. In order to minimize the traffic flow onto Grandview Place, the driveway onto Grandview Place will be exit only with only right turns permitted.

The approval of this ancillary use in this residential district holds the line on commercial intrusion into the residential zone. Under the ancillary uses ordinance, no further expansion is possible. The zoning of this parcel still reserves the parcel for single family use at some point in the future. Permitting the parking area on this property relieves congestion and access problems experienced by the business requesting this permit. Planning staff is recommending conditions for the approval to ensure that the project mitigates impacts on surrounding property owners.

Planning and Development staff recommends approval of a motion to issue a conditional use permit for this location with the following conditions: 1) The site plan shall meet all the conditions identified by TRC in their approval of the proposal ; and 2) The site must be brought into compliance with the approved site plan within 60 days of approval. If it is not, no use of the site for parking or other non-residential use will be permitted.

The site plan presented does meet most of those conditions identified by TRC. However, the remaining conditions that need to be met are as follows: (1) indicating the hours of operation - 7:00 a.m. to 9:00 p.m.; (2) parking lot lighting to be shielded from adjacent residential uses; (3) remove excess asphalt to provide required landscaping; (4) provide appropriate signage at exit driveway; and (5) site must comply with the approved site plan. He noted that the project will be subject to the City's stormwater management ordinance.

Mr. Green stated that City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance, and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]: (1) That the proposed use or development of the land will not materially endanger the public health or safety; (2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region; (3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property; (4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is locate; (5) That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City; (6)That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and (7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Mr. Green said that adjoining property owners have expressed concerns about the traffic impacts of this parking lot, the impact on property values, and about the location of the dumpster. A condition in the conditional use permit is that the dumpster be screened by a fence. The City Traffic Engineer has reviewed the plan and in order to minimize the traffic flow onto Grandview Place, the driveway onto Grandview Place will be exit only with only right turns permitted.

Councilman Peterson asked when the house and garage were demolished. Mr. Green said that he didn't know but this issue came to the Planning Department's attention in September when concerns were expressed by the neighbors about the grading activity on the site. At that time the grading on the site was completed and the parking lot was constructed without any permits and in violation of City standards and requirements.

Upon inquiry of Councilman Peterson, Mr. Green said that a demolition permit is required by the Building Safety Department to demolish a house in addition to approval from the WNC Regional Air Quality Agency. He was not sure whether the permit or approval was received by the owner prior to demolition.

With regard to grading, Mr. Green said that submittal of an erosion control plan, approval of that plan, and issuance of a grading permit was not done prior to the grading activity on the site. In addition, paving requires a conditional use permit and that was not applied for prior to the initiation of the paving.

Councilman Peterson asked if there have been any penalties assessed for the demolition, grading and paving. Mr. Green was not aware of any, however, he did note that this project was on the agenda for the Erosion Control Review Committee. That Committee reviews penalties or assessments for violation of the erosion control ordinance. Unfortunately he was not aware of the action taken by that Committee with regard to this. There have been no penalties from the Planning Department for doing the work without the conditional use permit. Planning staff is trying to bring this through the process and have the project brought into compliance with the City's standards.

In response to Councilman Peterson, Mr. Green said that if the owner had come to the City and said he wanted to tear down a house and put in parking, that the project would not have met one of the standards for ancillary uses, because the lot is supposed to be vacant. City Attorney Oast read out of the Code that "ancillary uses ... may not be located on lots that within 18 months prior to the date of application had more than one residential structure that was demolished except pursuant to the determination by the City Building Inspector that the structures were dilapidated."

Councilman Worley wondered if the hours of operation of restaurant will correspond with the condition that the parking lot only be used from 7:00 a.m. to 9:00 p.m.

Upon inquiry of Councilman Hay, Mr. Green said that had the lot been vacant and not prepared for parking, City staff's recommendation would have been the same as it is now – approval with conditions.

Mr. Nicholas Papanastasiou, owner of the parking lot, said that he did get a permit to demolish the vacant, non-livable house in advance. He said he did apply for a grading permit and he thought it passed, but it had not been issued. He said he didn't know he needed a paving permit. He said he was concerned about safety because one of his delivery trucks has to park on US 70. He very much wanted the exit onto Grandview Place for safety. He said his hastiness was a scramble to save his business because his delivery trucks drove across his neighbor's property and his neighbor built a barrier. In response to an earlier question by Councilman Worley, he said that his restaurant stays open until 10:00 p.m. Monday-Thursday and 11:00 p.m. on Friday-Saturday.

Upon inquiry of Vice-Mayor Cloninger about parking lot lighting, Mr. Green said that there are types of lighting fixtures and shields that can be placed on them to direct the light down onto the parking lot and make sure there is no filtration out to the residential areas.

232

Upon inquiry of Councilwoman Field, City Traffic Engineer Michael Moule said that based on site distance it is safer for people to exit onto Grandview Place and then onto Tunnel Road than to exit directly onto Tunnel Road.

Upon inquiry of Vice-Mayor Cloninger, Mr. Green said that it appears from the information he has that the application for the grading permit, the grading and the paving activities occurred approximately at the same time and those construction activities took place prior to issuance of any permits. As to why the owner when ahead without waiting on approval, Mr. Green said the owner stated that he (1) needed the parking area; and (2) that the contractor was there on site doing the demolition of the home and it was good to do it all at one time.

Mr. Phil Henderson, adjoining property owner, said that his concern is that he has rental property that adjoins the parking lot. He said that he did have the corner of his property repaved and installed a curb so that the delivery trucks would stop destroying that corner. He had never had a problem with the restaurant's customers parking in the florist shop's lot and he is also the owner of that building. He was also concerned that there is a building right across the property line where the dumpster is located and asked that the dumpster be moved closer to the business. He asked that a 6-8 foot privacy fence be installed on the east side of the property to keep people from cutting across going up to Oteen Church Road. He didn't have a problem with the parking lot, just the location of the dumpster and the need for a privacy fence on the east side of the property.

Mr. Steven Henderson said that an appraiser he talked to said there would be a negative impact to the adjoining properties without some sort of a privacy screen.

Mr. Roger Lyda, engineer for the owner of the parking lot, responded to questions from Councilwoman Field about the possibility of moving the dumpster to a different location. In addition, he said that although it is feasible to build a fence on the east side of the property, trees would have to be cut down.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 6:56 p.m.

Upon inquiry of Councilwoman Field, City Attorney Oast said that if what Council is interested in doing is addressing the issues raised about a fence on the east side of the new parking lot and relocating the dumpster off of the eastern property line, that may be something that could be worked out at the staff level. Suggested findings of fact and conclusions, that would incorporate those conditions, could be brought back to Council on April 10, 2001. If something could not be worked out, then staff would report that as well.

Mayor Sitnick was concerned with the possibility of setting a precedent. Her problem is that even though it seems there may not have been a blatant disregard for the permitting process, activities still took place on this land prior to permits being issued for any of those activities. Now after the parking lot is completed, City Council is being asked to circumvent the process in order to grant a conditional use permit so the developer can do what he wants on that property.

Councilwoman Bellamy asked if the owner would still be able to use his parking lot if Council denies the conditional use permit or remands the matter to the Planning & Zoning Commission. City Attorney Oast said that the parking lot is an illegal use.

Councilman Peterson said that the property owner did contact City staff and he believed that staff would have informed him of the process involved but the owner did not follow that process. He feels that Council will be rewarding someone for violating several City ordinances and encouraging everyone else to do what they want to do and then once it's done, City Council is going to have to accept it.

Councilman Hay did note that Mr. Green said that had this come to City staff before any work had been done (after the house was demolished), staff's recommendation would be the same – approval with conditions. After hearing the comments made, he feels that what it boils down to is the property owner went forward with the parking lot without permission.

Councilwoman Field moved to remand this issue to City staff so they can work with the applicant and the neighbors to resolve the issues with regard to the privacy fence on the east side of the property, the re-location of the dumpster off of the east side of the property, and the hours of operation with regard to the parking lot. Staff was instructed to bring the matter back for Council consideration on April 10, 2001. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

Mayor Sitnick also asked that staff make sure the parking lot light that shines into the residential neighborhood be addressed.

Councilman Peterson also asked staff to consider, partly as consequence for proceeding on this without the proper permits, allowing the parking on the north side, requiring additional buffering without parking spaces on the south side, and also not allowing the exit onto Grandview Place. He felt that if there are half the number of parking spaces on the new lot, there should be plenty of room for people to turn around and drive back down into the existing lot. Councilwoman Bellamy did not agree with taking out the exit on Grandview Place because that is the safest exit and it's only one way out.

City Attorney Oast said that he would bring back a proposed ordinance addressing the issues for City Council consideration at their next formal meeting on April 10, 2001.

Mayor Sitnick asked that City staff come back to City Council with some recommendations about what the City can do when someone does not adhere to the rules that everyone else is required to adhere to. She felt the City must send a message to the community that they are going to be consistent in their treatment to all the citizens. Mr. Green responded that some City departments have monetary penalties for starting work without a permit. They will work with the City Attorney's Office to see what can be done and come back with some recommendations for City Council to review.

B. PUBLIC HEARING TO CONSIDER THE REZONING OF PROPERTY LOCATED AT 240 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS TO COMMERCIAL INDUSTRIAL DISTRICT

ORDINANCE NO. 2797 - ORDINANCE TO REZONE 240 SMOKY PARK HIGHWAY FROM HIGHWAY BUSINESS TO COMMERCIAL INDUSTRIAL DISTRICT

Mayor Sitnick opened the public hearing at 7:14 p.m.

Chief Planner Gerald Green said that this is the consideration of a request to rezone property located at 240 Smoky Park Highway from HB Highway Business District to CI Commercial Industrial District. This public hearing was advertised on March 16 and 23, 2001.

The City has received a rezoning petition requesting the rezoning of property (PIN No. 9617.08-98-6299) located at 240 Smoky Park Highway from Highway Business District to Commercial Industrial District. The 5.5 acre tract is located just off Smoky Park Highway at the intersection of Smoky Park Highway and Montgomery Street. It is the site of the Moore's building supply business. Access to the property is via Montgomery Street, with an at-grade railroad crossing required. Montgomery Street, I-40, and the Norfolk-Southern Railroad right-of-way bound the property. Surrounding land uses include primarily commercial uses, with some undeveloped property adjacent to the site. Rezoning is requested to permit light industrial use of the property. The property has several attributes that make it appropriate for light industrial use, including:

- Adequately served by water and sewer;
- Adjacent to a railroad line and served by a railroad spur;
- Easy access to a primary arterial highway and to an interstate highway;
- Physically separated from residential development; and
- Gentle topography (site previously developed).

Staff has received no comments in opposition to the requested rezoning.

The Planning and Zoning Commission voted 5 to 0 to recommend approval of the rezoning of the property located at 240 Smoky Park Highway from Highway Business District to Commercial Industrial District. The Planning and Development staff recommends approval of the requested rezoning.

Mayor Sitnick closed the public hearing at 7:17 p.m.

Mayor Sitnick said that members of Council have previously received a copy of the ordinance and it would not be read.

Councilman Worley moved for the adoption of Ordinance No. 2797. This motion was seconded by Councilwoman Field and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 114

C. PUBLIC HEARING TO CONSIDER THE ISSUANCE OF A CONDITIONAL USE PERMIT FOR THE CONVERSION OF KENILWORTH INN, LOCATED AT 60 CALEDONIA ROAD, TO APARTMENTS

ORDINANCE NO. 2798 - ORDINANCE GRANTING A CONDITIONAL USE PERMIT FOR THE CONVERSION OF KENILWORTH INN, LOCATED AT 60 CALEDONIA ROAD, TO APARTMENTS

City Clerk Burleson administered the oath to anyone who anticipated speaking on this matter.

City Attorney Oast reviewed with Council the conditional use district zoning process. This process is the issuance of a conditional use permit, which is a quasi-judicial site specific act. At this public hearing, all the testimony needs to be sworn.

After hearing no questions about the procedure, Mayor Sitnick opened the public hearing at 7:18 p.m.

Urban Planner Stacy Merten submitted into the record City Exhibit 1 (Affidavit of Publication), City Exhibit 2 (Certification of Mailing of Notice to Property Owners), City Exhibit 3 (Staff Report) and City Exhibit 4 (copy of landscape plan). This public hearing was advertised on March 16 and 23, 2001.

Ms. Merten then said that this is the consideration of a conditional use permit for the conversion of the Kenilworth Inn, located at 60 Caledonia Road, to apartments.

Mr. Frank Howington has submitted development plans for Level III site plan review to convert the Kenilworth Inn to an 84 unit apartment building. The Inn is located on approximately 6 acres atop Kenilworth Knoll. The property is zoned Institutional. There are currently four buildings on the site. They consist of the main building, which is 200,000 square feet, a one story mechanical room of 2,763 square feet, a one story garage with 1,940 square feet, and a 70 square foot storage room. The main building, mechanical room and garage will be converted to apartments. The storage room and existing basketball and tennis courts will be removed. The existing parking area will be utilized with minor reconfigurations that will reduce the parking from 116 to 108 spaces. Most of the existing landscaping will be retained with some additional landscaping done at the entrance and some renovations to the landscaping adjacent to the north side parking lot. New sidewalks will be constructed and bicycle parking provided. The property has been subdivided in conjunction with the site plan review.

The Technical Review Committee (TRC) reviewed the plans at their meeting on October 16, 2000, and took action to approve with the conditions outlined as follows: (1) Indicate loading zones and bicycle racks; (2) Relocate handicapped parking spaces to provide accessible paths to building; (3) Provide detailed drawing of handicapped ramps; (4) Provide detailed drawing of screened dumpster area; (5) Provide parking lot lighting plan; (6) Indicate bus stop location (transit services requests developer provide shelter); (7) Label uses for all structures; (8) Indicate rear residence entrance to building; (9) Indicate correct zoning of adjacent properties (RS-8); (10) Indicate sight triangles at driveway entrances; (11) Indicate location of traffic control devices (signs and flow of traffic); (12) Existing 36" oak in parking lot must have large island to survive (150 sq. ft. / 4" tree); (13) Provide detailed drawing of parking lot buffer fence and landscaping; (14) Provide detailed landscaping plan in requesting "alternative landscaping" (indicate species); (15) Provide detailed drawing of tree protection barriers; (16) Label parking lots in table to coincide with site plan; (17) Provide needed information to complete stormwater and erosion control review (items missing); (18) Submit for review any changes in the water system plans; (19) Sidewalks need to be extended to and along Caledonia Road (remove section of old driveway); (20) Parallel parking spaces on Caledonia Road must be removed; (21) Existing parking lot aisle width of 20 feet is substandard; a redesign to 45 degree parking with one-way aisles would result in equal number of spaces; (22) Consider the relocation of the six parking spaces that are parallel to Caledonia Road; (23) Redesign the driveway access from parking lot #4 to permit two-way traffic flow; (24) Make sure pedestrian access to all parking lots is well defined; (25) Provide needed information on sprinkler system and water supply for fire flow; (26) Application must be submitted for water availability; and (27) Application must be submitted for wastewater allocation.

Ms. Merten said that all of the conditions have been met except the provision of a covered bus shelter. The applicant is proposing a transit stop, but they did not want to provide a covered stop.

The Planning and Development staff and the TRC find that the project will meet all the technical standards for development in the Institutional zoning district if the covered bus shelter condition is addressed.

City Council must take formal action as set forth in section 7-5-5(e) of the Unified Development Ordinance, and must make the following findings based on the evidence and testimony received at the public hearing or otherwise appearing in the record of this case [UDO 7-16-2 (c)]: (1) That the proposed use or development of the land will not materially endanger the public health or safety; (2) That the proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its

236

basic community functions or by providing an essential service to the community or region; (3) That the proposed use or development of the land will not substantially injure the value of adjoining or abutting property; (4) That the proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is locate; (5) That the proposed use or development of the land will generally conform with the Comprehensive Plan and other official plans adopted by the City; (6) That the proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and (7) That the proposed use will not cause undue traffic congestion or create a traffic hazard.

Mr. Jeff McGahee, landscape architect for developer, said that they have provided a concrete pad with benches but didn't feel a covered transit stop would be needed because (1) they didn't think the neighborhood would use the bus stop; (2) in the event of rain, there is adequate cover under a nearby building; (3) from an aesthetic point of view, a house would be looking directly at the bus stop; and (4) the additional cost to the developer.

Councilwoman Field felt that a good architect could design a covered bus shelter that would be aesthetically pleasing and given the total cost of the project, a covered bus shelter doesn't seem quite that expensive to build.

Councilwoman Bellamy asked Ms. Merten to ask the developer if he could put in a couple of affordable units in this project.

There being no request from the applicant for rebuttal, Mayor Sitnick closed the public hearing at 7:35 p.m.

Vice-Mayor Cloninger moved to (1) grant the conditional use permit for the conversion of the Kenilworth Inn, located at 60 Caledonia Road, to apartments, with the condition that a covered bus shelter be provided and screened from adjacent properties as necessary; and (2) instruct the City Attorney to prepare the Order for the Mayor's signature: This motion was seconded by Councilwoman Bellamy and carried unanimously.

ORDINANCE BOOK NO. 19 – PAGE 116

D. PUBLIC HEARING REGARDING INSTALLMENT CONTRACTS FOR THE PURCHASE OF PROPERTY ON AZALEA ROAD

RESOLUTION NO. 01-39 - RESOLUTION APPROVING CONTRACT FOR THE PURCHASE OF 69.43 ACRES OF REAL PROPERTY ON AZALEA ROAD (WELLS)

RESOLUTION NO. 01-40 - RESOLUTION APPROVING CONTRACT FOR THE PURCHASE OF 35 ACRES OF REAL PROPERTY ON AZALEA ROAD (MOYER)

RESOLUTION NO. 01-41 - RESOLUTION APPROVING CONTRACT FOR THE PURCHASE OF 43 ACRES OF REAL PROPERTY ON AZALEA ROAD (MOYER)

Mayor Sitnick opened the public hearing at 7:38 p.m.

City Attorney Oast said that this is the consideration of resolutions authorizing the City to enter into contracts for the purchase of three properties on Azalea Road This public hearing was advertised on March 16 and 23, 2001.

In 1998 Council authorized the City to enter into options for the purchase of approximately 155 acres of property on Azalea Road. Since then the City has undertaken various investigations and studies of the property, survey work, and title work, and determined that acquisition of the property and its use potential for several important public purposes is feasible. In January, following extensive public input, Council directed staff to proceed to acquire the property.

Because the City is purchasing the property over several years rather than all at once, the law requires that a public hearing be held on the purchase contracts. The City proposes to acquire the property in three separate tracts, and there are three contracts that require approval.

The essential terms of each contract are set forth as follows, and in the sample promissory note and deed of trust:

Michael and Sandra Wells, and Eric and Sharon Wells (69.43 acres)
Price: $9,500 per acre; not to exceed $659,585
Term: 59 months
Payments: $100,000 at closing
$132,979 annually for the years 2002-2005; fifth (2006) payment of $122,165 to be made 11 months after fourth (2005) payment
Interest: 5% per year on unpaid balance

John Moyer (35 acres)
Price: $10,428.57 per acre; not to exceed $365,000
Term: 59 months
Payments: $50,000 at closing
$62,800 annually for the years 2002-2005; fifth (2006) payment of $22,800 to be made 11 months after fourth (2005) payment
Interest: 0% (legal rate on overdue amounts)

John Moyer (43 acres)
Price: $12,000 per acre; not to exceed $625,000
Term: 59 months
Payments: $55,000 at closing
$112,900 annually for the years 2002-2005; fifth (2006) payment and last payment to be made 11 months after fourth (2005) payment
Interest: 0% (legal rate on overdue amounts)

The purpose of the hearing is to review the terms of the contracts, not to revisit Council's decision to purchase the property, nor to decide upon particular uses (which Council has said will be done later).

The City's staff has obtained appraisals supporting the price that we have agreed to pay, and the Finance Department advises that the terms are very favorable, not likely to be duplicated in the commercial market.

Mayor Sitnick stressed that adoption of these resolutions do not in any way have anything to do with the uses of the property. When City Council does come to those discussions, there will be ample opportunity for public input.

City Clerk Burleson said that Ms. Gail Moody, President of the Beverly Hills Homeowners Association" asked that her letter dated March 27, 2001, be entered into the record. In part the letter reads "In a memorandum, dated March 7, 2001, Mr. James L. Westbrook, Jr., City Manager, stated 'We will be coming to City Council to request permission to use the Azalea Road inert landfill site prior to having completed the Parks Master Plan for the overall site.' He stated further that 'Since the inert debris site operation plan is logistical in nature, there are no plans to solicit public input.' ... (portion of verbatim transcript of January 23, 2001, City Council meeting) .... As residents of East Asheville, we believe it would be premature to begin using this site as an inert landfill. That action would not be consistent with your vote to purchase the property. We also believe that public input should not be squelched at any point during the process to determine the best use of this City asset. Finally, Mr. Westbrook's memorandum did not mention any efforts toward recycling inert materials until the Azalea Road property can be thoroughly evaluated. We see recycling, not as an option, rather as an essential in the near future. We, respectfully, ask that you prohibit any specified use of this property until all phases of the feasibility study and Parks Master Plan have been completed."

City Manager Westbrook responded to Council that the letter refers to no public process. He explained that is from the staff's standpoint before it is even brought to City Council. Again, this is not Council's process but strictly speaking from staff's point of view.

Upon inquiry of Councilwoman Bellamy about where the money is coming from, City Manager Westbrook said that this money was in last year's budget and that a project is set up in the general capital project fund. He said he would provide information regarding that to all of Council, in addition to a copy of the closing statement when available.

Mayor Sitnick closed the public hearing at 7:48 p.m.

Mayor Sitnick said that members of Council have previously received a copies of the resolutions and they would not be read.

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-39. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 316

Councilman Worley moved for the adoption of Resolution No. 01-40. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 318

Councilwoman Field moved for the adoption of Resolution No. 01-41. This motion was seconded by Councilman Worley and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 320

Mayor Sitnick suggested a unique opportunity in our community would be the development of a kind of family recreational sports facility, consisting of all kinds of family fun activities located in one place, like a bowling alley, skating rink, ice skating rink, tot land, dance hall, restaurants, etc. She felt this would be a wonderful venture all residents and tourists alike could enjoy.

At 7:50 p.m., Mayor Sitnick announced a 15 minute break.

IV. UNFINISHED BUSINESS:

V. NEW BUSINESS:

A. REPORT OF PLANS TO PROVIDE SERVICES TO AREAS PROPOSED FOR ANNEXATION

Urban Planner Paul Benson said that the Annexation Services Plan is being submitted for Council's approval for the following areas: Lowes, Upper Sondley, Best Inns, Old Dominion Freight and Arden area. He said that his comments will apply to all five proposed annexation areas.

City Council approval of this document is the second step in the annexation process that began on March 13, 2001, when Council adopted the resolutions of intent to annex these five areas.

The N.C. General Statutes require that municipalities exercising annexation authority make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing and public information meeting, prepare a report setting forth such plans.

The Statutes require that the reports include:

1) Maps showing: (a) The present and proposed boundaries of the municipality; (b) The present major trunk water mains and sewer interceptors and outfalls, and the proposed extension of such water mains and sewer outfalls; and (c) The general land use pattern in the area to be annexed.

2) A statement that the area to be annexed meets the standards of the statutes as to the character of the area.

3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation including: (a) Police protection, fire protection, solid waste collection and street maintenance on the date of annexation; (b) Extension of water and sewer lines in accordance with City policies; (c) A proposed timetable for construction of water mains and sewer outfalls, (in any event to completed within 2 years of the effective date); and (d) The method under which the municipality plans to finance extension of services into the area to be annexed.

4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed.

5) A statement showing how the proposed annexation will affect the City's finances and services, including revenue change estimates.

He then reviewed with Council a summary of the Annexation Services Plan as follows:

Qualifications: All areas qualify under at least 1 of the 5 urban development tests set forth in the statutes, either being 100% developed, (Best Inns and Old Dominion), or having at least 60% of the lots developed, along with 60% of the total acreage of the vacant and residential properties being subdivided into lots of 3 acres or less, (Lowes, Upper Sondley, Arden), or having an estimate population density of a least 2.3 persons per acre, (Lowes).

Service Extensions: The plan provides information on the level of service currently being provided in the City that will be extended to the annexation areas; basically:

Police protection is to be extended on effective date of annexation with no increase in personnel or equipment.

Fire protection to be contracted from rural fire departments currently serving the areas to be annexed, with contracts based on the compensation specified in the statutes.

Solid waste collection is to be extended on the effective date of annexation with no increase in personnel, or equipment. New customers would receive the automated collection service. Compensation would be offer to private solid waste hauler to offset economic loss as required by the statutes.

Street maintenance services are be extended in the Upper Sondley Area to Upper Sondley Drive, and in the Arden Area to Linden Street, Sycamore Drive, Blake Drive, Royal Pines Drive, Peach Tree Street, Cedar Lane and Sycamore Terrace. Existing personnel and equipment will be sufficient to handle this additional street maintenance. (approximately 2 miles total).

Water distribution with the exception of the Lowes Area, water distribution is currently at City standards, or is already programmed for improvement. This plan has been revised since being originally distributed to Council. Two hydrants indicated as being installed subsequent to annexation in the Arden area, are programmed to be installed independent of annexation. In the Lowes Area 2,000 linear feet of 6" and 4" water line are planned, along with three new fire hydrants. Construction is scheduled to be complete by June 30, 2004.

Sewer collection with the exception of the Lowes Area, the sewer collection is currently at City standards. In the Lowes Area 1,250 linear feet of 8" sewer line is planned to be constructed by June 30, 2004.

Financial Impact:

Total revenue (property tax, state utility franchise tax, sales tax, Powell Bill revenue, fees & charges) = **$300,905**

Annual expenditures (rural fire department contracts, street lighting) = **$33,744**

Capital expenditures (water & sewer, compensation for solid waste haulers, rollout garbage containers, street signs & marking), (mostly water & sewer) = **$439, 336**

Councilman Hay asked City staff to check if the wording is correct with regard to the City's share of sales tax reimbursement on Page 4-2 of the Plan.

Councilman Peterson said that he would speak to Budget Director Ben Durant about the formula used with regard to sales tax.

Councilman Peterson noted that of the revenue that we would be gaining from the additional annexed areas, about one-half is from the property tax. The other half is from the additional sales tax, state utility franchise tax, Powell Bill revenue, etc. When the City looks at annexation, we need to think of more than just the additional ad valorem taxes.

Mr. Bob Mayhew questioned how Upper Sondley Drive meets the urban development tests to qualify for annexation.

Mr. Mayhew asked what the City's plans are for the Haw Creek Fire Department. Mr. Benson said that the Statutes require that the City offer to contract for a period of five years unless some other arrangements are made that is acceptable to both parties.

Upon inquiry of Mayor Sitnick, City Manager Westbrook said that the City is not required to continue to pay the rural fire department after five years. The five year period of time was because the rural fire departments obligate themselves to buy equipment. This gives them a chance to pay that equipment off over that five year period of time. At the end of the five year period, the City will assess their ability to provide service and if they can provide the same, or better service, then the contract would not be renewed.

Upon inquiry of Councilman Peterson, City Attorney Oast said that if any non-conforming uses are annexed, then they would remain non-conforming and be allowed to continue in existence, but not to expand.

Mr. Bill Dickerson, Upper Sondley area property owner, wanted to make sure that the City will add Upper Sondley Drive to the list of City-maintained streets. Also, he was concerned about having trash roll-out containers due to the topography of the homes in the area.

Upon inquiry of Mr. Jim Kaslik, Upper Sondley area homeowner, Assistant Fire Chief Robert Griffin said that Tunnel Road Station 8 is staffed with 4 persons and Haw Creek has one person Monday-Friday during the business hours. The Asheville Fire Department's response is immediate 24-hours a day. He explained that the average response time presently is four minutes throughout the City. At the present time we do not have a contract with Haw Creek, but we have an arrangement with them where they do respond with us into the existing corporate limits and we respond with them into their areas on a mutual aid, automatic basis.

Councilman Hay stated that when the City annexes, they make sure that it is done by providing full service across the board to everyone in the annexed areas, not like some areas in the past. Each one of these annexations provides as comprehensive service as any place in the City.

Councilman Peterson explained how annexation benefits not only Asheville citizens, but the people who get annexed.

Mayor Sitnick said that members of Council have been previously furnished with copies of the resolutions and they would not be read.

RESOLUTION NO. 01-42 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE LOWES AREA

Councilman Worley moved for the adoption of Resolution No. 01-42. This motion was seconded by Councilwoman Field and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 322

RESOLUTION NO. 01-43 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE UPPER SONDLEY AREA

Councilwoman Field moved for the adoption of Resolution No. 01-43. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 323

RESOLUTION NO. 01-44 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE BEST INNS

Councilman Worley moved for the adoption of Resolution No. 01-44. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 324

RESOLUTION NO. 01-45 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE OLD DOMINION FREIGHT AREA

Councilman Peterson moved for the adoption of Resolution No. 01-45. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 325

RESOLUTION NO. 01-46 - RESOLUTION APPROVING THE REPORT OF PLANS TO PROVIDE SERVICES TO THE AREA PROPOSED FOR ANNEXATION WHICH IS GENERALLY KNOWN AS THE ARDEN AREA

Vice-Mayor Cloninger moved for the adoption of Resolution No. 01-46. This motion was seconded by Councilman Hay and carried unanimously.

RESOLUTION BOOK NO. 26 – PAGE 326

VI. OTHER BUSINESS:

VII. INFORMAL DISCUSSION AND PUBLIC COMMENT:

A. COMMENTS BY FRED ENGLISH

Mr. Fred English, Haw Creek resident, felt that Asheville did not need passenger rail service. In addition, he felt that the City needed to build a new Civic Center.

B. CLAIMS

The following claims were received by the City of Asheville during the period of March 9-15, 2001: BellSouth (Water), BellSouth (Water), Wade Watkins (Water), Jayda Hayden (Police) and City Information Services (Streets).

The following claims were received by the City during the period of March 16-22, 2001: Elizabeth Laisy (Water), Sean Carey (Police), David Kriegsman (Streets), Dorothy Hobein (Water), Russell Thomas (Streets) and Lyle Lance (Fire).

These claims have been referred to Asheville Claims Corporation for investigation.

C. LAWSUITS

The City was served with the following Complaint on March 20, 2001: Henderson County & Cane Creek Water & Sewer District v. Asheville, Buncombe & Henderson County Water Authority, City of Asheville and Buncombe County. The nature of the proceeding is the defendant City is charged with failure to comply with Section XXII of the Regional Water Agreement that the

City convey to Henderson County title to property on Brevard Road in fee simple absolute. This matter will be handled in-house.

The City was served with the following Complaint on March 26, 2001: Byron Case Dame Jr. v. City of Asheville. The nature of the proceeding is a complaint for money owed for damages allegedly occurring on December 4, 2000, at the Rankin Avenue Parking Garage. This matter will be handled in-house.

D. CLOSED SESSION

At 8:44 p.m., Vice-Mayor Cloninger moved to go into closed session to discuss matters relation to the location or expansion of industries or other businesses in the area served by the City Council, including agreement on a tentative list of economic development incentives that may be offered in negotiations – G.S. 143-318.11 (a) (4). This motion was seconded by Councilman Worley and carried unanimously.

At 9:05 p.m. Councilman Worley moved to come out of closed session. This motion was seconded by Vice-Mayor Cloninger and carried unanimously.

VIII. ADJOURNMENT:

Mayor Sitnick adjourned the meeting at 9:05 p.m.

CITY CLERK

MAYOR

C. Auth

DEPARTMENT OF CULTURAL RESOURCES

DIVISION OF ARCHIVES AND HISTORY

ARCHIVES AND RECORDS SECTION

CERTIFICATE OF AUTHENTICITY

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PAGE: 1

and end with **VOLUME:** 72 **YEAR:** 3-27-01

PAGE: 243

It is further certified that the above records were microfilmed in conformity with the provisions of the *General Statutes of North Carolina,* chapter 8-45.1 and 8-45.4, ***"Uniform Photographic Copies of Business and Public Records as Evidence Act "***; that the microphotography processes accurately reproduce the records so microfilmed; that the film forms a durable medium for reproducing the original, if necessary; and that the film used conforms to American National Standards Institute, *Photographic Films-Specifications for Safety Film,* ***ANSI IT9.6-1991*** and American National Standards Institute, *Imaging Media (Film)-Silver Gelatin Type-Specifications for Stability,* ***ANSI NAPMIT9.1-1992***.

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Walter J. Bollinger

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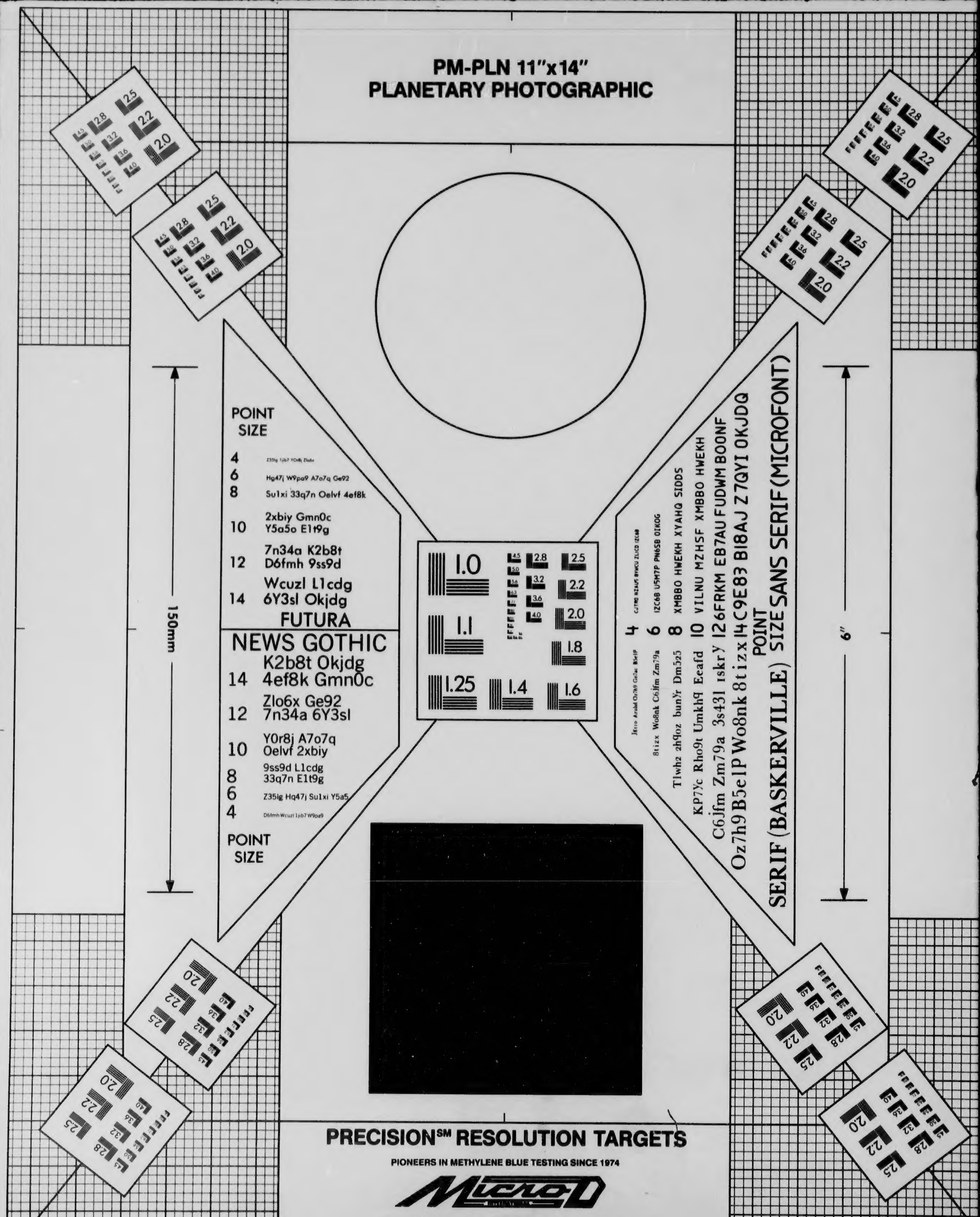
PLANETARY PHOTOGRAPHIC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14 Wcuzl L1cdg 6Y3sl Okjdg
FUTURA
NEWS GOTHIC
14 K2b8t Okjdg 4ef8k Gmn0c
12 Zlo6x Ge92 7n34a 6Y3sl
10 Y0r8j A7o7q Oelvf 2xbiy
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C6Jfm Zm79a 3s431 ıskrY
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SERIF (BASKERVILLE)

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